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THE
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O F
PATRONAGES
C O N S I D E R E D,

And some of the Antient and Modern Arguments
for the Exercise of that Right in presenting to
Churches, Surveyed.

Together with REMARKS on an anonymous Writ, in-
dustriously handed about among Ministers, Probati-
oners, and Students of Divinity, called, *The Case of*
Patronage.



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T H E

Right of Patronages Considered,

And some of the Antient and Modern Arguments for the Exercise of that Right in presenting to Churches, surveyed. Together with Remarks on an anonymous Writ, industriously handed about among Ministers, Probationers and Students of Divinity, called, The Case of Patronage.

The INTRODUCTION.

HE Right of Patronages is like many other Things in the World, which by the Succession of Time and many other occurring Circumstances, hath undergone its Alterations, both as to the Right, and the Exercise of that Right. In offering a few Thoughts on this Subject, I am not to trouble the World with copying over the historical Accounts given us by several learned Men, concerning the Original of Patronages, and the Differences between the ancient Patrons, in the

the End of the Fourth, and Beginning of the Fifth Centuries, who were but Factors for the Church, Protectors and Managers of the Churches Patrimony, and the Patronages which afterwards in the Time of Popish Idolatry, did obtain ; which did run in a quite different Channel, and extended to the palming down of Ministers on Christian Societies, when other Persons, as more agreeable to them, would have been their Choice. Which corrupt Morsel was so sweet in the Mouths of worldly Men, that our reformed Church of *Scotland* hath, during the greatest Part of her Liberty since the Reformation, been oppressed therewith ; and other reformed Churches have so heavily felt this Yoke, as to be obliged to groan under the same, and breathe after Relief, tho' to little Purpose.

I am to discourse this Subject in the following Method ; and that the reading may be the less tedious, and the more distinct, I shall make the following Heads so many Chapters.

First, I shall consider the common Notion of this Patronage-Right, especially as it is defined in the Canon Law.

Secondly, Shall take a View of this Right as established by our Laws and Acts of Parliament since the Reformation from Popery.

Thirdly, I shall lay down some Distinctions, as the State of a Question, and as Fountains for solving Difficulties with respect to this Right.

Fourthly, I shall lay down an Assertion with respect to this Right, and direct to such Reasonings as may confirm the same.

Fifthly, I shall answer Objections, and consider some Distinctions and Opinions, that have been and now are made use of, to support this Patronage-Right in whole or in Part.

Sixthly, After the Example of the Author of the Anonymous Write, I shall conclude with some Corrolaries.

(5)

C H A P. I.

*The common Notion of the Patronage-Right considered,
especially as it is defined in the Canon Law.*

THERE is some small Difference with respect to the Definition of the Patronage-Right. Some define it thus, *Jus nominandi vel præsentandi ad officium & beneficium*. But this Definition carries the Right higher than what is done by the Canonists themselves, some of whom define it thus, *Potestas nominandi seu præsentandi, aut offerendi clericum ad beneficium simplex vacans*. But the plain and short Definition we have in *Institut. Jur. Can. Lib. 1. Tit. 28. Potestas præsentandi instituendum ad beneficium vacans*. And when the Canon Law adopt this Definition, we are not to imagine, that any Civil Law made by a reformed Common-wealth carries the Right higher than this Power of presenting one to be ordained to a vacant Benefice.

All that is incumbent on me on this Particular, is to account for the received and established Notion of the Patronage-Right in the worst of Times, namely when Popish Idolatry and Superstition did prevail: So that if any will pretend, that the Patron's Right did then extend further, they will be so good, as to shew us that Statute, Civil or Ecclesiastick, that during the dark Ages of Popish Idolatry, extended that Right any further. And as they really did not extend the Right any further, so they could not in Reason extend it any further, the Foundation of the Patron's Right being the *dos, ædificatio, fundus*, that is, that he who builds and endows a Church, hath a Right to present a Man to that Gift or Benefice.

CHAP.

(6)

C H A P. II.

The second Head is to consider the Patronage-Right, as established by our Laws and Acts of Parliament since the Reformation from Popery.

IT is to be noticed, what Order was observed in this Church in the Election of Ministers, before we find any Act of Parliament concerning Patronages, before the *Confession of Faith*, and first Book of *Discipline* were formed : This Church that time of Day was directed by the Book, called, *The Book of common Order, or the Order of the English Kirk of Geneva*, whereof *John Knox* was Minister, approved by the learned *Calvin*. In which Book, on the Head of Electing Ministers, this Order was observed : "The Ministers and Elders are to assemble the whole vacant Congregation, who (the Congregation) are to appoint two or three to be examined by the Ministers and Elders, and he who is found meet, is to be presented to the People for their Election or Acquiescence; and so without further Ceremony, he is by Prayer admitted".

At the Convention holden in *January 1560*, but as *Calderwood* notices, by the new calculation, *January 1561*, the first Book of *Discipline* was subscribed by a great Part of the Nobility, whose Names are to be seen in every History of that Affair, and at the End of the first Book of *Discipline*.

There are two Things here to be observed, 1. That this Book of *Discipline* was authorized by the then Authority of the Nation. 2 That whatever After-opposition it met with, it was stuck unto, by all the faithful Maintainers of this Church's Liberty ; and although the second Book of *Discipline* came out several Years af-

ter-

terwards, yet we do not find it condemning the first, nor differing therefrom, excepting in some very small Matters ; and in that of the Election and Calling of Ministers they do intirely agree ; so whatever Corruption might have obtained in *Scotland* from 1561 to 1581, that is to be impputed to the Iniquity of the Time, that was still plotting the establishing of Prelacy, and is not to be construed as any Allowance of the true Sons of the Church of *Scotland*, who laid hold on every Opportunity of asserting and maintaining this Churches Right and Liberty.

What was the Method of settling Ministers according to the first Book of Discipline, we see in Chap. iv. " Ordinary Vocation consisteth in Election and Admission : It appertaineth to the People, and every several Congregation to elect their Minister, and to the Ministers his Examination, or the judging of his Qualifications and Fitness ; and no violent Intrusion is to be made on Parishes, without the Votes and Suffrages of the People". On this *Calderwood* well observes, That there is here no Mention of a Presentation by a Patron, or to a Bishop, or of Trial by the Archdeacons, as the manner is in the Popish, and was in the *English Church*.

It is to be observed, that as this Method was authorized by the then Authority of the Nation, so there was no publick Statute contrary thereto, till the Year 1567 : It is true, upon the Queen's Arrival from *France*, some of them who had signed the first Booke of Discipline, began to draw back, and the Queen refused the Ratification of the said Booke of Discipline, though we find not that ever it was condemned by any publick Act, during her Reign, nor was there any Law then made, subversive of the Order therein established, only the Queen's Ratification could not be had, and some Subscribers of it, falling in with the Court Measures, did occasion great Discoultance thereto.

But

But still that Order was observed and contended for by this Church, without any Mention of, or Regard to Patronages; as appears 1. From the Appointment of a General Assembly holden at *Perth June 1563*, who gave a Commission to some Ministers to plant Kirks, preach, visit Schools, Colleges, confer Benefices, &c. 2. An Assembly at *Edinburgh December 25.* that same Year, thought needful, for further Confirmation of the Book of *Discipline*, to appoint some to revise it; and yet no Alteration is made therein, which shows the Church their stedfast Adherence thereto.

There are sundry Remarks might be made on the Conduct of this reformed Church, when Patronages are mentioned in Acts of Parliament, which I shall leave to the answering of Objections, only at present shall mention the most noticeable Acts of Parliament that concern Patronages.

Anno 1567. in King *James VI.* his first Parliament, it is enacted, " That the Examination and Admission of Ministers be only in the Power of the Kirk, the Presentation of Laick Patronages always reserved to the just and ancient Patrons, and that the Patron present a qualified Person within six Months (after it may come to his Knowledge of the Decease of him who bruiked the Benefice before) to the Superintendent of thay Parts, where the Benefice lyes, or others having Commission from the Kirk to that Effect; Otherwise the Kirk to have Power to dispone the samine to any qualified Person for that Time: Providing that in case the Patron present an qualified Person, & failing one, another, within the said six Months, and the said Superintendent, or Commissioner of the Kirk, refuse to receive, and admit the Person presented be the Patron, as said is; It shall be leisom to the Patron to appeal to the Ministers of the Province, where the Benefice lyes, and desire the Person presented to be admitted, which if they refuse,

" to

" to appeal to the General Assembly of the whole Re-
alm, where the Cause being decided shall take End,
as they discern and declare." *

Whatever after Acts of Parliament there were with
relation to Patronages, till the Year 1649. that they
were abolished, as a Grievance to the Church, all were
founded upon, directed and regulated by this Act 1567.

Patronages stood abolished from 1649 to 1661. That in the first Parliament of *Charles II.* Prelacy was introduced, and they were restored; and so they continued to the Year 1690. that by the happy Accession of King *William* to the Throne of *Britain*, the Church of *Scotland* is restored to its ancient Privileges, and by an Act of the Parliament that Year, Patronages are abolished, and the Church came to enjoy her just Freedom in the Election of Ministers.

This Act of Parliament stood in Force, till the tenth Year of Queen *Anne*, that they were, by an Act of the British Parliament restored, in the following Terms. After an Account is given of the Repeal of the Act 1690. as, *Concerning the Call of Ministers by the Heiritors and Church-Sessions*, " That it had proven in-
convenient, and had occasioned Heats and Divisions;
therefore the Right of Patrons, to the Presentation
to Churches and Benefices, is renewed and confirm-
ed, and they are to present a qualified Man, to the
Churches of which they are Patrons; and the Pres-
bytery shall be obliged to admit such qualified Per-
sons presented, as the Persons presented before the
making of this Act ought to have been admitted."

Thus stood the Case of Patronages, from *May 1712* to the Year 1719. that the British Parliament gave us the favourable Act (which had been of great Use, if duly improven) *That if there be no Acceptance of a Presentation, the Presentation is to be void and null in Law.*

From these Things we may observe, 1. That in the very Infancy of our Reformation, for the Space of some

Years, Patronages had not the Countenance of any Law Civil or Ecclesiastick. 2. That the Patronage-right hath not been defined as any Thing else, than what it was in the Time of Popery. 3. That excepting the British Act 1719. the ancient Limitations of Patronages, which since the Reformation have had the Countenance of Law, have been as strict, yea and more express than the A^t decimo Annæ, repealing the A^t 1690. and restoring Patronages.

C H A P. III.

In this Chapter I shall lay down some Distinctions, as the State of a Question, and as Fountains for solving Difficulties with respect to this Right.

First, The Question is not, if there be any Laws establishing the Patronage-right, in the planting of Churches; that is not refused, as appears from the fore-mentioned A^ts of Parliament; as the Patronage Right is meerly a human Institution, so it hath human Laws authorizing it. But it is to be observed, That although the Patronage-right be confirmed, ratified and corroborated by sundry A^ts of Parliament, since the Reformation, yet these Laws give no other Definition of the Right, than what did obtain in the Time of Popery. But the Question is, If by the Law of God and New Testament Rule, either expressly or by Consequence, there be any Warrant for such a Right? Which is flatly refused.

2. When the Question runs between us and our Presbyterian Disputants for the Patronage-right, the Question with them is not, If it be warranted by the New Testament Rule, for this they have not pretended, that we know of. But the Question is, If, notwithstanding

standing the Gospel Rule of calling Ministers, the Patronage-right may be indifferently used, without encroaching on the New Testament Rule? Which is denied.

3. The Question is not concerning the passive Obligation which a Church Society, as Members of a Common-wealth; may be under by this Patronage-right, as it is established by the Laws of a Common-wealth; for it is not refused, but a Church must groan under an undue Right, when without a violent Concussion of the Church, such an Evil cannot be got removed. But the Question is, If, where there is no more as a passive Obligation, a Church can lawfully by Precept or Practice allow of this Patronage-right? Which is refused.

4. The Question between us and our modern Dissenting for Patronages, is not, If Patronages in general be a lawful Right: But if this Right may be so limited, as with these Limitations it may be lawfully exercised? Or, the Question may be stated thus, Whether a Right in it self unlawful can be so limited, as to be lawfully exercised? Which is refused. A Man may murder his Sovereign, and usurp the Throne, may submit to very reasonable Limitations of Government, and yet it is unlawful and unjust that he should govern.

5. The Question is not, How far the Church may take the Advantage of some Limitations of this Patronage-right (which Right they judge in it self unlawful) for avoiding, if possible, the Force of that unjust Right. But the Question is, If the taking the Advantage of these Limitations of an unlawful Right, be any Homologation of that Right? This is refused. A Church Judicatory may take the Advantage of the British Act of Parliament 1719. concerning accepting of Presentations, in order to refuse a Presentation, when not compleated by an Acceptance, yet this is no War-

Tant for Acceptances, nor Ground for Persons presented to accept ; for the Church might expect, that if Ministers and Probationers would adhere to the professed Principles of this Church, they would not accept of Presentations, in which Case they would be void and null in Law.

6. The Question is not, If the Church may propose, and be fond to have the Patronage-right limited, when they cannot get quite rid of that Right. This they may do. But the Question is, Whether the proposing and fondly accepting of such Limitations, when the usurped Right cannot be got removed, be any Allowance of, or Acquiescence in the Patronage-right, or of the Exercise of it with such Limitations ? Which I refuse. A Person may propose to a High-way-man to save his Life, tho' he take his Purse, when yet he is well satisfied in his Mind, that the Robber had no Right to his Purse, but in taking it away had done a very unjust and an unlawful Thing.

7. The Question is not, How far it is lawful for the Church to resist the Law, which is a Question very big in the Mouths of them, who in one Shape or other defend Patronages, either as to the Right, or the Exercise of the Right. But the Question is, How far any Law, inconsistent with the Law of the Lord Jesus, is binding ? For though I am not always to make an active Resistance to a standing Law, which I judge a Burden to Conscience, yet (if I may use the Term) I am to make a *passive* or *negative Resistance*, by Non-obedience : For it is a known Rule in *Ethicks*, that, *Leges humanae per se non obligant conscientiam.*

8. The Question is not, How far a Patron may so exercise his Right, as not to violent a Parish in their free Choice ; for although this may sometimes be done, yet it is very seldom and rare, and every one knows what secular Influence Patrons have on Parishes, either in granting Tacks of Tithes, or in disposing of vacant

Stipends ;

Stipends ; and this Influence is such, that many Times that hath been thought the free Choice of a Parish, which hath been no such Thing at the Bottom. But the Question is, How far it is lawful for a Church, who believe the Perfection of the *New Testament Rule*, to allow or countenance a human Invention, in the Nomination and Choice of a Minister ?

9. The Question is not, If a habile Person presented by a Patron, who is a Parishoner, should be listed at the Election of a Minister ; no doubt any unexceptionable Parishoner hath a Right to propose a fit Person for the Election. But the Question is, If Church Judicatories are under any Obligation to list the Person presented by him, who hath no more Interest in the Parish as the Patronage-right ? We are under no such Obligation, and it is a manifest Invasion of the Church's Liberty, to have any Person nominated and presented to them by such as have no Interest in the Parish, and so no Voice in the Election.

10. The Question is not, If ever the Church of Scotland esteemed Patronages a Grievance ; for that cannot be denied by our modern Presbyterian Disputants for Patronages ; only they say, *That the Exercise of the Patronage-right was not limited as it is now*. But the Question is, If Patronages be not as grievous now as ever ? Which we affirm they are ; yea and more grievous, because (excepting the Act of Parliament 1719. which is not duly improven) they are less limited than they were before the Year 1649. as will appear by the Act of Parliament 1567. and the *Act decimo Annæ* restoring Patronages.

11. The Question is not, How far the Church may remonstrate against the Patronage Right, even tho' established by the Laws of the Land ; this is allowed even by our *Erastian* Presbyterians. But the Question is, If the Church can, consistent with this Duty of Remonstrating, tolerate the Exercise of a Right in itself

self unlawful? Or, tho' they should tolerate the Exercise of that Right, doth the establishing of that Right depend on the Church's Toleration? This is refused; for it is a Right established by human Laws, antecedent, without, yea and contrary to the Church's Consent and Approbation.

12. The Question, between us and the new Disputants for Patronages, is not, If the Patron hath a Right to present one to the pastoral Office. This much they deny to the Patron, and small Thanks for this Concession; the *Canon Law* it self never gave the Patron such a Right: The Definition of the Right according to it, being, *Jus præsentandi vel nominandi, instituendum ad vacans beneficium.* So that the Patronage-right in this respect is as well limited by the *Canon Law*, and better, than in the common and ordinary Forms of Presentations. But a grand Part of the Question is, If the Patron hath a Right to present to the Benefice? Which I refuse.

13. The Question is not, If a Christian Magistrate may not determine the *Quota* of a Church Benefice, and ratifie and confirm a Right and Tittle thereto by civil Laws. This is not refused. But the Question is, If civil Laws be the Ground and Foundation of a Minister's Right to his Stipend? Which is refused. So that, if the Laws of the Common-wealth only modify the *Quota*, ratifie and confirm a Right consequential upon such an Office, and pastoral Relation, but giveth not the Right and Tittle, far less hath the Patron a Power of giving that Right.

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C H A P. IV.

In this Chapter I shall lay down an Assertion with respect to this Patronage-right, and direct to such Reasonings as may confirm the same.

THE Assertion then which I lay down, is, That whatever Passive Obligation the Members of a Church as Subjects of a Common-wealth may be under, with Respect to Patronages in the Church, yet the presenting to Churches and Benefices is an usurped and unlawful Right, and cannot be so limited, the Right remaining, as to be lawfully exercised; nor is it lawful for the Church to give any active Countenance thereto.

If I should enter upon the Proof of this Assertion, it behooved me to 1. Prove Patronages in the Church to be an unlawful and usurped Right. 2. That what is in it self unlawful cannot be so limited as to be lawfully exercised. 3. That it is not lawful for the Church to give any active Countenance to Patronages, either as to the Right or the Exercise of that Right.

With respect to the first, That Patronages in the Church are an unlawful and usurped Right, I refer to all these Arguments, used by the reformed Churches, proving and asserting, that the Church hath a Right of choosing Ministers, and consequently the Right of giving them the Title to a Benefice, for the *beneficium sequitur officium*. It hath a clear Foundation in Nature, that Man be subsisted, and it is always agreeable to Reason, that they who are serviceable to the World, and to human Society, be rewarded for their Service; so that the Foundation of a Minister's Right to Stipend, is Service, and not the arbitrary Grant of another.

I shall not enter upon that difficult Question concerning Tithes, which seem to have been practised in the Church long before Moses, as in the Case of Abraham's paying Tithes to *Melchisedeck*, Gen. xiv. 20. If this Payment was any Part or Appendage of the Law of Nature (which with strong Reasons is pleaded by some, we having no Account of any positive Institution of the Payment of Tithes, earlier as *Moses*) then it would follow, that Ministers have not only a natural Right to a Maintenance, but that the Tithes are the Fund of Maintenance : Which makes the common Argument for the Right of Patrons to evanish, their having doted the Church, the common Fund and Patrimony whereof being the Tithes, of which a small Part is allowed to the Church. So that our Patronage-men, and their Supporters, are reckoned by many (and not unjustly) to be sacrilegious in two Respects. 1. By acting contrary to an apparent natural Right, in alienating from a pious Use any Part of the Tithes. 2. In pretending to give a Right to that in a civil Fashion, to which there is a previous Title by a natural and instituted Right.

We find that according to the Canon Law *Instit. Lib. 2 Tit. 26.* Tithes are called, *Quota bonorum mobilium pro Deo, tam divina quam humana constitutione debita.* To be sure the Canon Law speaks not of the Debt of Tithes, what it once was, but what they judged it now to be, and when they join the Divine and Human Constitution together, they must only mean, that the Human Constitution corroborates, and makes effectual what is due by Divine Appointment. On this we have a considerable Argument. If Tithes be a Tribute due to God, which in the several Ages of the Church have been a Fund of Maintenance for the Ministry, then that Maintenance is to be disposed in the way that God hath appointed, and no Man in a way of civil Interest

rest or Right, may pretend to give or abstract that which is due to God.

By a Decree of our Scots Parliament 1567. Tithes are acknowledged to be the Patrimony of the Church, and by our General Assemblies 1566 and 1576, the same Patrimony of the Church is said to be *ex jure divino*. Now one would think, that what is declared by our Laws civil and ecclesiastick to be the Churches Patrimony, the Church should be the Disposers of that Patrimony, and not he who gave not the Church this Patrimony.

But a Minister's Right in virtue of his Office to a Living, the Apostle rationally demonstrates, 1 Cor. vii. 9. v. &c. Now if a Minister have a Right to a Maintenance from the Church where he serves, it is incumbent on the Christian Magistrate, as a nursing Father to the Church, to see this Right made effectual, and not to put it in the Power of any to dispose of the Benefice, before *in foro ecclesiastico* there be a Foundation of Right.

For what else is expressly statuted, approven or reasoned against this Patronage-right, I refer to our second Book of *Discipline*, Chap. xii. Par. 10. to the Declarature of the General Assembly, July 24. 1649, to the 10th Act of Assembly 1712. to the learned Author of *Altare Damascenum* Pag. 591. &c. to the learned and pious Professor Rutherford, in the End of his Book, intituled, *The due Right of Presbyteries*, Pag. 458. &c. to that excellent Treatise of Mr. Park's against Patronages, to the second Volume of the famous *Gisbertus Voetius* his Ecclesiastical Policy Page 580. to 660. My Reasonings and Refutations are to be only versant about the modern Disputes, that are arisen and practised in our Church Judicatories concerning the Exercise of the Patronage-right.

As to the second Particular in our Assertion, That what is in it self unlawful cannot be so limited, as to

be lawfully used. This would seem to admit of no contradiction. If Patronages were only unlawful as to some Circumstances and Methods of using the Right, they might be so limited as to be lawfully used ; but, I say, that *funditus* the Right is usurped: So that as no Limitations of Government will make an Usurper a rightful Magistrate, so no Limitations will make an usurped Right lawful. Though the Church should cede with their Right, and devolve it upon the Patron, this can be no Condition or Limitation establishing the Patron's Title. Because, what the Lord Jesus hath vested in the Church as their Right, they are not at Liberty to dispone or barter with the Patron ; neither can Patrons condescend upon any such Ecclesiastick Dispositions. So that their Right remains to be usurped, and cannot be so limited, as to establish a lawful Title. Suitable to this, are the Words of the learned *Beza Conf. Ch. 7.*

Hoc dico, hoc vociferor, omnes illas provisiones, præsentationes, collationes, signaturas, Bullas, &c. totidem esse fenestras per quasvi perrumpunt in ovile Domini totidem cuniculos, quibus domum Dei, quantum inse fuit, subruerunt, quum neque in verbo Dei, neque in illo purioris ecclesiæ scripto, vel Græco, vel Latino, vel levissima fuit istarum rerum mentio, quas unus Satan evovuit, ut ecclesiæ puritatem inficeret : Ideoque non de ejusmodi rerum reformatione, sed ejectione, abolitione, & ultima internecione, serio omnibus piis hominibus esse cogitandum.

I shall in the third Place, offer a few Sentences shewing that it is not lawful for the Church to give any active Countenance to Patronages, either as to the Support of the Right, or the Defence of the Exercise of that Right.

As to the active Countenance that a Church or the Ministers thereof may give, tending to support the Patronage-right; this might be left to these *Erastian* Gentlemen, who put the Government of the Church so in

the Magistrates Hand, as that he may govern it in what way it pleases him, when yet such a Power to the Magistrate in civil Government would be justly thought arbitrary ; but it would seem, according to them, that arbitrary Government is more tolerable over the Church, than in the State, the Absurdity whereof I need not stay to consider. But as to the Matter in hand, it is hard for any to alledge that the Church of *Scotland* is for the Support of the Patronage-Right, considering their many Testimonies and Complaints against it as a Grievance, tho' at the same Time it is uncomely to be told in *Gath*, and published in the Streets of *Askelon*, that some one or other *Presbyterian Minister* in his most publick Performance declared Patronages to be a very small Grievance, and not so hurtful as we make it by our Opposition thereto. And although that our present Church-managers, particularly in Assemblies and Commissions, allow Patronages to be called a Grievance, yet when it comes to the Exercise of this Right, their Declarations amount to no more as Words of Course.

How far a Church acts unlawfully in giving an active Countenance to the Patronage-right, or to the Exercise of that Right, will appear by taking a View of some of the Practices of Ministers and Probationers, too much supported by Church Judicatories in their Decisions, concerning the Settlement of Churches by Presentations, or the Influence of the Patron.

The first Instance respects Ministers and Probationers, who in order to secure their own Settlements, do involve the Settlement of one, who may have the Gospel-Call, and that by accepting of Presentations, and so confirm the Patron's Deed, which would be void and null in Law, if there were no Acceptance, according to the *British Act of Parliament 1719*.

A second Instance of this active Countenance to Patronages, is, when the General Assembly of this

Church shews an Unwillingness to censure or discourage the Accepters of Presentations, which, if it were done, would make effectual the Advantage to be had by the fore-mentioned Act of Parliament 1719.

A third Instance of this active Countenance given to Presentations, is, when instead of correcting and discouraging the Accepters of Presentations, they are the Persons countenanced, their Settlements affirmed, tho' to the Invasion of the Rights of the Christian People, and the Order and Constitution of the Church, as in too many Cases, here to be mentioned; but I shall condescend on some.

In the Case of the Parish of *Oyn*, a very complaisant Letter of Acceptance, by the Presentee, is written to the deputed Patron, the real Patron not being qualified, and this not only previous to the Presbytery their sounding the Inclinations of the People, but even when there was abundant Evidence of the Parish's Aversion to the Presentee, which always appeared; yet by the Influence of some disaffected Gentlemen he is settled, his offensive Letter of Acceptance is overlooked, not only by the Presbytery, tho' some dissented, but also by the Synod of *Aberdeen*, who, but in April 1726. obliged a Presentee to renounce his Acceptance, when yet there were more in the Parish, to which he was presented, inclining him, than in the Case of *Oyn*.

The Settlement of the Parish of *Old Machar* hath made too much Noise before Church Judicatories, to be omitted here; in which Case the *Old-town* College, pretending to be Patrons, present their Principal, who, as one under great Obligations to them, accepts of this Presentation, and consequently by a Court of Correspondents he is settled, which Settlement was rescinded by the Assembly 1729. yet notwithstanding of the Offence given by his Acceptance, and the College presenting and he accepting *de novo*, his Settlement, by the Assembly 1730 is affirmed, not only to the Grief of

the

he well affected in that Parish, but also too a great Occasion of stumbling; Presentations and Acceptances, after the Example of the Principal of an University, now passing as innocent, yea necessary Things; and instead of the Youth their being trained up in sound Notions, concerning our Church Constitution, they are in Hazard, by such Practices, of being in their younger Years so tinctured with Prejudices against our Church Constitution, as may not be got easily removed, especially when under the Influence, and by the Practice of their University-men, they must look on that as necessary, which this Church, when acting like her self, hath always declared to be grievous and unlawful.

The Settlement of the Parish of Renfrew, is another sad Instance of the active Countenance given by this Church to Presentations. The Presentee is admirably cautious in his Letter called the Acceptance, which was pleaded, and not without Reason, to be no Acceptance at all. Notwithstanding of this, the Reverend Commission, in August 1729. understanding that Mr. Woodrow had the Majority of what, by the Stile of some, is called *the legal Electors*, which they controverted on frivolous Grounds; and also understanding the Body of the Parishioners to be for Mr. Woodrow, that they might fortify the alledged Call to the Presentee, they first argue upon his Letter, as an Acceptance, in order to validate the Presentation; they sustain the Presentation as timeously given, tho' without the six Months; and to give the greater Aw to it, plead the Respect due to the King's Presentation, whom we must esteem to be such a benevolous Prince, as not to give them great Thanks, who plead his particular Patronage-right, to the Prejudice of the Christian Rights of his Subjects. It was not a little surprising to find some of the honourable Members of the Commission talking in a threatening like Stile, namely, *That*

we would provoke the Government, to explain the Patronage Act more fully, and other Things concerning this Church, as yet a little dubious. I would fain know, if the Church of Scotland is not to depend on the publick Faith pledged, in that Article of the Union securing our Church Establishment? Or, if they are to conclude, that the Government is to cut and carve thereon at their Pleasure? I would further ask, What Security we can have, by the publick Faith, for any of our Privileges civil or sacred, if this Faith may be broken, or explained away? Any, who will read our Histories, may observe what severe Measure Lord Balmerinoch met with, in Charles I. his Reign, by reviving against him an old Act, *concerning Leesing-making, and raising Jealousies in the Minds of Subjects against the King and his Laws*; which that noble Patriot, the Earl of Argyle also felt the Smart of, very early after Charles II. his Restoration. I could make no English of such Speeches in the Commission, but that, if we will not comply with the corrupt Measures, which some are carrying on, we should find a British Parliament, that would laugh at our legal Establishment and Security. Let the King, his Parliament, and all his loving Subjects judge, if such Threats have not a Tendency to cool the Minds of Subjects to their Prince, as if no Credit were to be given to the publick Faith. But we are perswaded better Things; and tho' Matters should fall out, as some would threaten, we may have a corrupt Ministry brought into the Church, we may be a Scorn to the Jacobites; but all the Hardships threatned will never make us turn Jacobites; and Time may give the Government a Proof of Constantius his Saying, *That they who are not true to their God, will never be true to their King.*

The Settlement of the Parish of New Machar deserves a Room here, in which the Reverend Commission, in August 1729. acted their Part also; it were tedious

tedious here to relate all the offensive Circumstances in this Affair, the circumveining Methods that were taken to promote that Settlement, which are more largely to be seen in the printed State. It could not but be very grievous, that upon a Pretension of the Patron's Right, the Lords of Session should invade our ecclesiastical Liberty, in pretending to sift the Procedure of a Presbytery, and yet the Commission not to regard this, but instead of this, that they should have acquit the Presentee, who was under a Suspension by the Presbytery, for a Matter not in being, when the Assembly committed the Affair of *New Machar* to them. The Acceptor of the Presentation to *Old Machar* judges Patronages necessary in making a Settlement effectual, the Presentee to *New Machar* acts as Arbitrator between the Patron and the Presbytery; and yet he is so supported, and countenanced by the Commission, as that a Court of Correspondents are appointed to moderate a Call for him only; and although it was proposed, that others might be put on the List, the Commission would not alter the Appointment. So that the Heritors of *New Machar* are pretty sure of an Occasion effectually to settle the Presentee; and so to obtain a Right to the vacant Stipend promised them, by some of the Members of the *Old-town* College, on Condition they would be for their Presentee. But tho' they have settled the Presentee, they have not obtained the vacant Stipend, but are obliged to suspend the College's Diligence against them for the same; and have decently given this as one of the Reasons of Suspension, *That they were promised half a Year's vacant Stipend, on Condition they would vote for the Person they should present.*

The Settlement of the Parish of *Hutton*, is another sad Instance of the active Countenance given by the Judicaries of this Church to Patronages, when the Presentee hath for him only two Heritors, one Elder, ten Heads

Heads of Families, and there were opposing, thirty six Heritors, the rest of the Session, and a numerous Body of People. This Affair was brought, by a Complaint against the Commission, before two Assemblies, and at last, in the Assembly 1730. the Presentee's Settlement at *Hutton* is appointed, which, that it might carry the more effectually, the Members of the Commission complained against, who were Members of the Assembly, sat and voted in that Affair ; without whose Votes it would have been far from carrying : But a Man presented must be supported, tho' in a Way contrary to common Equity, and what hath been the laudable Practice of this Church.

Agreeable to this of *Hutton*, was a Decision of the Synod of Aberdeen, October 1730. where the Acceptor of a Presentation is appointed to be settled at *Cushny*, having on his Part the Patron, three Heritors, one Elder, seventeen Heads of Families, against four Elders and seventy Heads of Families.

Again, The Conduct of the Commission, August 1730. in the Affair of *Crimond*, hath given such Countenance to Presentations, *Eraſtian* Encroachments, and undue Entries into the Ministry, that such a Case hath not of a long Time occurred ; although there wanted not Evidence of Concussion, according to the Rule concerning iterable Actions, and fuller Proof might have been had, if several Witnesses had not been contumaciously absent, yet the Presentee must be supported, tho' the Presentation was not given, till about seven Months after the former Minister was settled in a neighbouring Parish ; and a Paper signed by some of the Parish, under the Inspection of publick Notars, and not of the Presbytery, is by the Commission concurred with, as a Call, and a darling Court of Correspondents (many of whom were not Members of the Commission) is appointed to settle the Presentee. It is to be observed, That the Notars were the Presentee's Friends, which increased

increased the Suspicion of a *Simoniacal* Paction between
the Patron, Heritors, and Friends, of the Presentee.
According to the *Canon-Law*, that is *Simoniacal*, when
the Friends, or Agents for the Candidate do bargain
and compact, even tho' the Candidate should be igno-
rant of any such Paction or Agency. *Inst. jur. can.*
ib. 4. tit. 3 *Simoniace dicitur quis electus, etiam si*
quid, ignorante eo, datum fuerit vel promissum. And,
ib. 5. tit. 3. decret. Greg. *Electio simoniaca est cas-*
sanda, si propter hoc electoribus promissa fuerit pecunia;
quamvis electus ignoret.

A fourth Instance of the active Countenance given
by this Church to Presentations, is, When it is thought
criminal to consute the Right of Patrons, on any pu-
blick Occasion, or so much as prescribe it as a com-
mon Head to a young Man passing Trials, *Num jus*
patronatus sit ullo modo licitum in ecclesia Dei? Which
Prescription was found fault with, in a certain Preby-
tery; and when the young Man had given the ordinary
Definition of the Patronage-right, and asserted that
it was no ways lawful, some were pleased to vote, *Not*
sustain the Discourse, because of such a Thesis.

Time were like to fail me, in accounting for all the
lamentable Instances of the active Countenance given
by Church Judicatories, and their Members, to Pa-
tronages at this Day; but the Instances already given
may sadly suffice, with this Addition with respect to
the last Instance. That our Prudence, Policy and Prin-
ciples, seem to be much changed, since the End of Queen
Anne's Reign, when it was thought no ways criminal
nor imprudent, for the Presbytery of Kirkaldie to pre-
scribe an *Exegesis* to Mr. Duguid, *de jure patronatus*;
but it seems had he lived to 1730. he had met with
that Protection, which in that critical, tho' more honest
Time was denied him.

C H A P. V.

In this Chapter, I shall answer Objections, and consider some Distinctions and Opinions, that have been, and now are made Use of, to support this Patronage-right, in Whole or in Part.

I Shall begin with the Arguments made Use of by the Author of the anonymous Writ, called, *The Case of Patronage*.

First, that Writer grants, *That Patronages have been grossly abused, and if exercised pleno jure, as sometimes they have been, they are, as Beza calls them, satanical, and an unlawful Usurpation on the Christian Rights of the Church, and Liberties of Mankind.*

I shall upon this observe, 1. That the Canonists have been sensible of the Abuse which some might make of Patronages, and therefore, after they have defined this Right, to be a *Jus praesentandi instituendum ad beneficium vacans*, lest that an usurping Patron should mistake his Powers, they assert, *Lib. 1. tit. 28. Patronus non potest quem propria autoritate instituere, sub pena excommunicationis.* 2. I would fain know what the Writer means, by the *plenum jus* of Patronages? I should think he could mean no more, than what the Right is defined to be, the presenting a Man to a Bene-fice; and if this be *satanical*, then by his own Conces-sion Patronages, without the frightful Words *pleno jure*, are satanical; for according to the *Canon Law*, they cannot establish a pastoral Relation, under the Pain of Excommunication. 3. If by the Exercise of Patronages *pleno jure*, the Author means, the Patron's presenting without respect to the Inclinations of the Parish, I would ask him, If any Law whatsoever re-stricts the Patron to such a Method of presenting? I would

would further ask, If the *Act decimo Annæ*, restoring Patronages, be not introduced, with this Consideration, *That former Methods of electing Ministers bath occasioned Contentions, and therefore Patrons are restored to their ancient Privileges*; so that on the Footing of this Act, they use their Right *pleno jure*, sacrificing the sacred Rights of Christian Societies, to their own pretended ancient and personal Rights? I further ask, If the very Presentations themselves, as to the Form of them, maintain not this *plenum jus*? I yet ask, If Patrons fall from their Presentations, when they find the Majority of a Parish against them, or do not rather use their Influence to support their Presentations, in which they are too successful in Church Judicatories? I should think a candid Answer to these would oblige the Author to drop his *pleno jure* Distinction, or to confess without that Distinction, which is really an *ens rationis*, that Patronages are satanical.

4. I observe, He calls the *pleno jure* Presentation, *an Usurpation on the Christian Rights of the Church*; by which he would seem to insinuate, that the Church, *qua* Church, had Christian Rights, and Rights of some other Denomination; if he had said, the Rights of the Christian Church, I should not have made this Remark; for *qua* Church, all its Rights are Christian, or if *qua* Church, they have Rights of another Denomination, I ask the Author, If an Usurpation on the Rights of the Church of any Denomination be lawful?

5. He makes Patronages *pleno jure* to be an Usurpation on the Liberties of Mankind. On this I would ask the Writer, What doth it profit a Christian Society, to maintain their natural and instituted Rights in the Choice of a Minister, when it is in the Power of the Patron to give, or withhold that Living, to which the Elected hath a natural and instituted Right? Or, If it can consist with the Liberties of Mankind, to have their Hands bound

up from giving that Living, to which their Minister hath a natural and instituted Right?

Secondly, The Writer of the Case of Patronages allows, "That a Christian and reformed Church may and ought in a dutiful Way to apply to the civil Power for Redress of any Grievances sustained by the Laws establishing Patronages, and ever make pressing Instances to have the Law abolished."

I wish the Writer had told us, if the *A& Decimo Annæ* restoring Patronages, be in his Opinion a Grievance; which I notice, because he distinguisheth between Patronages and the Laws establishing them, as if Patronages were not evil in themselves, but become so by some Clause in a Law establishing them. However, abstracting from this precise way of Speaking, whatever be the Writers Opinion, it is evident, that the General Assembly of this Church *Anno 1712*, thought the Law establishing Patronages a Grievance, as in their approving the pressing Instances made by the Commission *Anno 1711*, for preventing any such Law: 'And as there are no Limitations of Patronages in the *A& decimo Annæ* restoring them, so tho' there had then been any such, the Church lookt on that Law, as it stood, to be a Grievance, and in their *18. A&* plead for redress of the same. Yea I may refer it to any unbiassed Person, if the *A& decimo Annæ* restoring Patronages, be not more illimitated as to the Extent of the Patron's Power, than any Acts relating to them since the Reformation? For in that *A& of Queen Anne*, the *A& of Parliament 1690*, appointing Heritors and Elders, with the Consent of the Congregation, to elect a Minister, is expressly repealed; whereas I may afterwards show, that in former Times of Patronages a greater regard was had to Parishes, and never till the *A& Decimo Annæ* were Parishes by any *A&* so expressly excluded from Electing their Ministers.

Thirdly,

Thirdly, The *Case Writer* next pretends to bring the Matter to a Question, and a very odd State of a Question it is, namely, "Whether Patronages, as now limited by the vigor of our Church Constitution, established by the civil Laws, is so sinful and unlawful an Invasion on the Church, as that we ought not, or cannot in Conscience peaceably tolerate, or quietly submit to the Exercise of them by particular Patrons, till such Time as the Legislature be pleased upon due Application to ease us of them? To which he answers, That they are not intolerable in this Sense, or absolutely unlawful."

Upon this I would ask the Author, If Patronages are not established by civil Laws, without any regard to our Church Constitution? I ask him, If the Church of *Scotland* hath such a Superintendency over the Parliament, as that it is competent for them to restrict and limit their A&ts? Again I ask, where are these civil Laws, that establish our Constitution with a Power of limiting A&ts of Parliament? I further ask, If our Church Constitution be confirmed by any new civil Law, since the Law *decimo Annæ*, restoring Patronages. And if not, How is the Vigour of our Church Constitution established by civil Laws, as to have a Right of limiting and restricting the A&t restoring Patronages? I own the A&t of Parliament 1719, concerning Acceptances, puts it in the Power of the Church of *Scotland* to render the Patronage A&t void and null; but according to the *Case Writer*, the Vigour of our Church Constitution is not to exert it self this way, otherwise he had not said in his first Corrollary, "That it is neither sinful, scandalous nor unlawful, to accept of a Presentation;" which is all one as if he had said, Tho' the A&t of Parliament 1719 hath put it in the Power of the Church to render the Patronage A&t a Nullity, the Vigour of our Church Constitution must not shew it self this way, be

because according to him the accepting of a Presentation is neither sinful, scandalous, nor unlawful and so we are left to guess, what he means by the limiting of Patronages by the Vigour of our Church Constitution.

When he says, "That Patronages are not so sinful, &c." he allows them in a lesser Degree to be sinful and unlawful, and what we ought to seek the Removal of. One would readily think that it were sinful and unlawful to accept of what is any way sinful and unlawful, tho' it be not unlawful *in gradu intenso*, especially when there is no Law obliging a Person to accept of a Presentation.

The Writer of the *Case* is bound, and not I, to reconcile what he says, "That we ought quietly to submit to the Exercise of Patronages, and yet that we ought to make pressing Applications to the Legislature to ease us of them ;" for you will observe, that it is his pretendedly limited Patronages, that we should seek to be eased of : So that in this very Sense they must be grievous, but according to him, we are quietly to submit to a Grievance, and yet at the same Time to make pressing Instances to have the Grievance removed. I am unwilling to call this Nonsense, but it seems not so intelligible or consistent.

What the Author means by a Church their tolerating Patronages, and that yet it is their Duty to endeavour to be eased of them, is also difficult to reconcile. But as to Toleration, there is either a Church or a State Toleration ; as the Author speaks not of a State Toleration of Patronages, they being established *sub notione juris*, so in the present Affair, we have nothing to do with it. Therefore as to a Church Toleration, Patronages are either pleaded in point of Interest or Conscience. In point of civil Interest they are not the Object of a Church Toleration, and as to a Conscience it may not be pleaded here. Toleration may be considered passive-

assively or actively. The Church may be said in a
active way to tolerate Patronage, when they chuse rather to groan under the Weight of that usurped Right, than to disturb the Peace of a Government establishing and supporting that Right. If this be all the Toleration the Author means, the Church of Scotland as good subjects may be said to tolerate Patronages in this sense. But if we speak of an active Toleration, it is not to be admitted, for it will never reconcile, that the Church should by any positive Deed of theirs give an active Countenance to a Thing in it self sinful in any Degree, and which they ought to remonstrate against.

The Author allows Patronages *pleno jure* to be Satanical, and that a limited Patronage is not absolutely unlawful; he had done Right to have told us what is that Limitation of Patronages, which makes a Thing in it self Satanical, to be anywise lawful; for if he saith be lawful to accept of Presentations, the Church hath no legal Handle for limiting them, and if they should lay down Limitations of a Right established by a civil Law, for which Limitation they should have no Warrant in the Law, they should not only invade the civil Magistrate's Prerogative, but also be unsuccessful in the Attempt.

I come now to his Arguments. The first of which, "That Patronages as limited by the Vigour of our Church Constitution, established by civil Laws, are not intolerable nor absolutely unlawful, because the Patron's Power, as now limited and commonly exercised, is not privative but cumulative; the Presentation only secures the Title in a legal way to the Person elected by the People, approved and received by the Church."

To this I answer first, The Writer had made his Argument the clearer, if he had told us what he meant by a *cumulative Power*; but if I may be allowed, I take

take the Nature of a cumulative Power to be the Concourse of them to whom of Right it doth belong to ratify and confirm the Deed of another ; as the Power of Presbyteries is cumulative in concurring with Parishes in the Election of a Minister. If this be the cumulative Power which he allows the Patron, he gives him what the Christian Church hath never yet given him. But 2. When he says, " That by this cumulative Power he secures the Title in a legal way to 'the Person elected,'" I shall suppose that he only means, that the Patron gives a Right to the Benefice, which I have shown, and yet may show more fully, that the Minister hath that without a Presentation. But in this way of exercising his pretended cumulative Capacity, he supposes Presentations not to be given to any but to such as are elected, approved, and received by the Church; but the forementioned Instances shew, That this is not the way that Patrons exercise their pretended Right; neither according to my Definition of a cumulative Power, is such a Power competent for the Patron. And if the Patron have such a cumulative Power, as hath been already defined, then Presentations are necessary, according to the Stile of some worthy Letters of Acceptance, and if they be necessary, then some more Regard is due to them as a Toleration, and it should seem strange to seek to be eased of what is necessary. I shall allow the Author, or any taking Part with him, to distinguish between what is necessary *in foro ecclesiastico*, and what is necessary *in foro civili*, and to refuse the Necessity of Presentations *in foro ecclesiastico*; but with that Breath he must give up with the Patrons cumulative Power, or if he will still maintain it, and therewith the necessity of Presentations *in foro civili*, according to his own Reasoning, he must conclude, that without a Presentation, a duly elected and ordained Minister hath no legal Title, which he hath indefinite-

ly expressed, and left us to judge his meaning; but in Charity, I believe he means a Title to the Stipend. All shall say on this shall be in a few Queries. I ask, If the Patron should not hinder a Minister's Settlement within the six Months of his pretended Right, nor give Presentation, would not the Minister duly admitted have the legal Title to the Benefice? I further ask, If Patron should not find the Moyen to have his Presentation made good in Law by an Acceptance, would the Person duly admitted obtain all Diligence for his Stipend *in foro civili*? And what then needs all his Talk of the Necessity of Presentations for securing the Title in a legal Way? It is plain, that the many corrupt and simoniacal-like Entries into the Ministry, are the great Pillars of Patronages: If they were not noticed by Judicatories, and Persons presented, the Grievance of Patronages would evanish. Let them offer their Presentations to Judicatories under five Thousand Instruments if they pleased, if Ministers and Probationers would not accept, and Judicatories would take a joint Course in discouraging Accepters, Presentations could be of no more Force, as so much Blank Paper.

That which the *Cave* Writer gives us, as his second Argument, is a Piece of History: But how far it proves the Lawfulness of Patronages in any Respect is the Question. His Words are, "All Controversies with respect to Elections, wherein Patrons are concerned, are finally determined by the General Assembly of this Church; nor in Fact; since the restoring and limiting of Patrons by the late Act of Parliament, has ever any Presentation taken effect contrary to the Determination of the Church."

Now what tho' I should grant all that he says, Will this defend either his absolute or limited Patronage? surely it will not. Nor hath this Piece of Story any Force of Argument, unless he had shown by some considera-

ble Instance, wherein the Decisions of late Assemblies have supported the Choice of Parishes, in opposition to the Patron. Is not this the Thing we complain of, that Assemblies, and especially Commissions, are supporting Patronages. I have condescended on some noted instances, and could do on many more ; and the Author had fortified his Argument, if he had given Instances, where, when Parishes were opposite to the Presentee, that presentations were rejected : But alas, instead of this, Patrons are countenanced, Parishes are imposed upon, Accepters of Presentations are daily more and more supported by Church Judicatures, and the most offensive Entries are made into the Ministry. He might be ashamed to mention the Limitation of Patronages by the late Act of Parliament ; for if, according to him, it be neither sinful, scandalous, nor unlawful to accept of a Presentation, the Limitation in the A&t of Parliament is made of none effect. Now, though the *Case*-Writer shall say, That the Church tolerate Acceptances, *pudet hæc opprobria nobis*, doth this mend the Matter, that the Church of *Scotland*, which but eighteen Years ago, did remonstrate so much against Patronages is now so far reconciled therewith, as not to improve any wholesome Law, by the Means of which we might get rid of this Burden?

The *Case* Writer in his third Argument asserts, "That the soundest reformed Divines allow Patronages "to be a tolerable Grievance." As to this, I have noticed, that if we take Toleration in an active Sense ; never in this way do the reformed Churches allow of Presentations, but in a passive Sense they are tolerable, that is, we must groan under what we cannot, through the Iniquity of the Time, get removed.

The Writer did well not to mention more of these Divines who have written on Patronages as the learned *Vestius* ; but that learned Man hath argued so strongly against Patronages, that it is a Mystery to me, why he should.

should be quoted. I expected rather a Quotation from *Maresius*, Loc. 15. 66. but *Voet* takes up *Maresius* so smartly, as his Antagonist on this Head, that to appeal to *Maresius* and *Voet* at one and the same Time, would be the using the Authority of two Men, in a thing wherein they are Antipodes, tho' even after all, all that *Maresius* is for, is no more as a Toleration of Patronages, when it cannot be got easily removed ; and it is easy to understand *Voet's Mind*, when in this very Thing, with great Vehemency he oppoles *Maresius*.

The Author of the Case quotes *Voet Lib. 3. Tract. 2. Cap. 9.* as saying, *Jus patronatus illicitum esse in foro boli*, but maintaining, *ejusdem tolerantiam tanquam mali necessarii, ubi absque reipublicæ aut ecclesiæ sublatione, aut gravissima concussione tolli non potest esse justam & licitam*. It is plain, that *Voet* owns the Right of Patronage to be unlawful. As for his Toleration it amounts to no more as a passive Tolerance. Will any say, that he would be a good Casuist, who steeming a Thing unlawful, would allow the Practice of that Thing, and an active Countenance thereto? The Writer really loses by his Quotation from *Voet*. For Proof of this consult him in the same Volume of his Ecclesiastick Polity, *Lib. 3. Tract. 2. Cap. 6.* He observes what *Maresius* had said of the Synod of Dort their allowing of Patronages, and answers in these express Words, *Ecclesiæ reformatæ apud nos, nunquam probant jus Patronatus, sed tolerarunt tantum tanquam defectum & malum quod tolli non poterat ; est enim regula notissima apud Casuistas, posse quem pie & bona Conscientia, aliquo in casu, tolerare alterius peccatum (pietate illa versante immediate circa tolerantiam, non vero circa peccatum) adhæc posse quem alterius peccato (seu potius uno aliquo, cumquo peccatum per accidens conjunctum sit) rebete uti, neminem tamen posse bona Conscientia illud facere.* So that we see *Voet's* Toleration amounts to no more as a passive Obedience, where better may not be

be, and this is not the Thing denied, or complained of; it is the active Countenance we condemn, and which the Author in sundry of his Corollaries would warrant and allow; and it is plain that *Voet* is for no such Toleration, otherwise he had not so smartly opposed *Marelius* in that very Thing.

The Strength of the *Case Writer* his fourth Argument lyeth in these express Words, "That the reformed Churches have never declared the limited Exercise of Patronages, so unlawful, as to be intolerable, but have by their Practice signified the contrary, that however grievous, yet it might be tolerated." And this Medium he endeavours to prove from sundry Instances. I shall therefore first consider what is in the Argument, and then survey his Instances.

First, With respect to the Argument, there is no doubt but a Church must groan under what they cannot get removed; but the Author all along in his Arguments and Corollaries drives at something more as this passive Toleration, even an active Toleration, which is the thing refused by us. And I should think the Author admitting of an active Toleration would need advert to what he had said, *viz.* "That the limited Exercise of Patronage is not so unlawful, as not to be tolerated"; that is, what hath in it some Degrees of Unlawfulness may (according to him) be allowed and countenanced. Now I ask, if it be good Ethics to allow or actively to countenance that which is any way unlawful? We commonly say, *Bonum petitur ex integra causa, malum ex quolibet defectu*. If I should by any positive Deed allow of what in any Degree is unlawful, I think I were allowing of evil; but my suffering a Thing to be, which really I cannot hinder, is no Allowance; and in this Sense, the Controversy should be at an end. But as I noticed, it is some positive Deed of Allowance which is pleaded for by the *Case Writer*.

Now I come to his Instances.

First, He says, That the Synod of Dort admit of Patronages with Limitations, though fewer than what at present this Church enjoys, there being no Room left for the free Voices of the People.

The best Answer I can give to this, is in the Words of Voetius, *Eccl. polt. lib. 3. tract. 2. cap. 6.* in answering this very same Objection, *De synodo Dordrena, sic se res habet, approbat illa constitutiones ecclesiasticas conscriptas in synodo Hagæ Comitana, anno 1586. Et decernebat ab illustr. Et præpot. D. D. ordinibus confirmationem politicam earum petendam. Sed interpellabant D. D. delegati illustr. ord. monentes res suas et tempora, tunc minime ferre, ut plane jus illud veleretur : Præsertim cum alicubi in provinciis aliquot, illius usus adhuc vigeret, immo nobiles certæ provinciæ nulla ratione tam communem ordinem ecclesiasticum probaturi essent ; quippe qui in convocationem synodi nationalis non consenserant, nisi sub cautione, ne quid in præjudicium hujus juris illic ageretur, cogitarit ergo synodus potius de ejus reformatione et limitatione. Quid aceret synodus ? Volens, nolens, post omnes admonitiones et obtestationes, tandem tolerarit clausulam illam capiti de electionibus adscribi ; salvo cuique jure patronatus quin aliter non poterat, &c.* I may for further Answer offer w^tat I observed in the State of the Question, That the Church, their proposing and kindly accepting of Limitations, when the usurped Right cannot be got removed, is no Allowance of that Right, or of its Exercise, with all its Limitations, s in that Place I did illustrate by a Similitude to which I refer.

The Case Writer is highly mistaken, when he says, "That the Limitations of Patronages, that were granted to the Synod of *Dort*, were fewer as what the Church of *Scotland* enjoys." If we consider, 1. That the State hath given us no Limitation of Patronages, except what is in the Act of Parliament 1719. and this

this proves no Limitation at all, if it be lawful to accept of Presentations. 2. Church Limitations of Patronages are of no Avail, unless these be ratified by the State ; now we have no such Limitations, the Limitations obtained at the Synod of *Dort*, were State Limitations. 3. We are so far from Church Limitations, that, tho' these were sufficient, the Stream of Church Decisions at this corrupt Time, tend to support Patronages, and to subvert the Rights of the Christian People. 4. I shall notice some of the Limitations proposed to the Synod of *Dort*, by which it will appear, that we have no such Limitations. The fourth Limitation is, *Ut præsentatio fiat ad summum, intra duas aut tres menses post ecclesiæ vacationem*; whereas with us, it is six Months, two Months further extended, than by the *Canon Law* it self. The sixth Limitation is, *Ut ecclesiæ retineant jus præsentatum repudiandi, siquidem dona, aut ingenium, aut mores ejus ipsi minime placeant, ne invitis ministris obtrudantur.* I hope, here is a Respect to the Church, and a Minister is not to be thrust in upon them against their Will. And that this Limitation looks further, as the Trial of the Presentee by the *Classis* or Presbytery, appears from the seventh Limitation. *Ut presentatus ab ecclesia receptus juxta communem ordinem ecclesiasticum, a classe examinetur, ecclesiæ proponatur, et in ministerio confirmetur.*

From what is said, it is plain, that neither *Voetius*, nor the Synod of *Dort* reckoned Patronages lawful, even with the proposed Limitations ; but seeing a Grievance, nill they will they, must be continued with them, they will endeavour to make it as easie as possible, when at the same Time, with all its plausible Limitations, it is esteemed a Grievance.

The Author quotes a Clause in *Voet*, Lib. 3. tract. 2. cap. 3. *Notandum autem authores hos patronis hominibus dieruis*

diernis, et prætenso patronatus exercitio directe opponi; bi e m ecclesias et presbyteria ab omni electioni excluunt volunt, et tantum classibus a se electum, examinandum et confirmandum imponunt ac committunt. From this the Case Writer inters, " We see what Sort " of Patronages that learned Man was impugning." All I shall say on this, is to observe, That if the Author had added what Voet says in that same Place, he would have found, that whatever Way it came about, in Voet's Time and Country, Regard was had to a due Election, tho' the Patrons pretended they did it *ex gratia*; and yet with this Allowance, that learned Man disputes against Patronages. Now we have no Limitation of Patronages allowed by the State, securing Parishes against violent Obtrusions of Ministers presented; for if the Presentation be accepted, and the Presentee can pass Muster in the Presbytery, the Parish must either receive the Presentee, whom yet they may not incline, or be miserably involved in pursuing the Settlement of another.

The Case Writer concludes the first Part of his Argument, by telling us, *That our Church Constitution, confirmed by divine and human Laws, doth allow the People the free Exercise of their Christian Rights, in giving their Voices at the Election of a Minister, which no Patron can justly preclude them from, or if they should claim it, the Church should, or would not gratifie them.*

Upon what he hath now said, I observe, 1. That it is good that he allows the *Jure-divinoship* of the Christian People their Rights, and that their Right is a Part of our Constitution. But, 2. It is in him a gross Mistake to say, " That this Part of our Constitution is " confirmed by human Laws;" in this he imposes on an ignorant Reader of his Paper. Indeed the A& of Parliament 1690 doth confirm this Part of our Constitution; but it will be remembred, that the A& de-

cimo Annæ, restoring Patronages, repeals that; so that whatever Security was given by any human Law, the Patronage Act doth take that away. 3. From what the Church should do, we are not now to argue, but from what the Church doth. Do not the Current of Church Decisions support the Patron, and discourage the People?

The Case Writer next proceeds to the Opinion and Practice of the Church of Scotland. First, He says, *That the Church of Scotland have never declared Patronages intolerable, when exercised in a more rigorous Manner than at present.*

To this I answer, first, That it is manifestly false, that ever the Church of Scotland did in an active Way countenance Presentations, till within these three or four Years, that Patrons and the Accepters of Presentations are encouraged, to the great Discouragement of the People. 2. Seeing the Author appeals to the second Book of Discipline, agreed on 1581. I am willing to go to it with him, and without any Comment on the Words, shall leave it to any to judge what the Church of Scotland judged concerning Patronages. See Chap. 12. Par. 10. Having spoken of free Elections, they add,

" And because this Order, whilk God's Word craves,
 " cannot stand with Patronages, and Presentations to
 " Benefices used in the Paipes Kirk; we desire alk
 " them who truely fear God earnestly to consider, That
 " for swameikle as the Names of Patronages and Be-
 " nefices, together with the Effect thereof, have flowit
 " from the Paip, and Corruption of the Canon Law,
 " in so far as any Person was intrusit over Kirks, ha-
 " ving *curam animarum*, and for swa meikle as, that
 " way of proceeding, has na warrand in the Word of
 " God, but is contrary to the same, and the said Li-
 " berty of Election, they ought not now to have Place in
 " in this Light of Reformation, and therefore whatsum-

{ ever

ever will embrace God's Word, and desire the Kingdom of his Son Jesus Christ to be advanced, they will also embrace and receive that Policy and Order, whilk the Word of God, and upright State of his Kirk craves, otherwise it is in vain that they have profest the same". It is to be observed, that this plain Confession of the Church of Scotland, distinguisheth not between Patronages *pleno jure*, and a limited Patronage, but declares the very presenting to Benefices to be contrary to God's Word, and the Liberty of the Kirk, and they were then so far from encouraging Presentations, hat they declare ; "That whosoever do so, it is in vain that they have profest the Kingdom of Jesus".

Secondly, He says, ' That Patronages in these early Ages of the Reformation in Scotland, were more rigorously exercised as now; without the Freedom of Election, Examination and Admission".

This he hath asserted but not proven, and the contrary of what he hath said will appear, not only from our Books of Discipline, but also from the Act of Parliament 1567, of which before, and the said Act of Parliament will be found more express in limiting the Patron, then the Laws now in being that relate to that Grievance, unless it be the British Act 1719; which we have not made the due Improvement of. To these we are to appeal, and not to the particular Decisions of this and the other Assembly, which were often more or less pure as Court Measures did prevail : And I am afraid if our Posterity were to judge of Things notwithstanding our Principles and Standards, but by what often obtains in our Judicatories, they should hardly be able to think, but that the General Assemblies and Commissions were for the Patronage-right. When not to repeat other lamentable Instances, the Assembly 1730 appoint the Settlement of a Presentee at Hutton, contrary to the great Body of Heritors, Elders and People. An

hundred Years hence, might not our Posterity say, That in the Year 1730, the Church of Scotland were for Patronages, and against the free Election of Parishes : And this they may say on the more presumable Grounds, when the Dissent of them who complain of these Corruptions is buried in oblivion, lest, if transmitted to posterity, such Determinations should be thought not to be the opinion of the Church, but happened at an illset Assembly. This very consideration, with some other things already offered, may be a sufficient Answer to the Case Writer's Quotations from the Procedure of ancient General Assemblies of this Church. But least his Instances of this kind be thought unanswerable, I shall consider them.

The Case Writer is first pleased to mention the Assembly 1671, but hath left it to me to set down their Words. On that of the Jurisdiction of the Kirk, Article 2d, they assert to belong thereto, the Election, Examination, and Admission of them who are to be put into the Ministry, or other Functions of the Kirk, Charge of Souls, and Ecclesiastical Benefices". Is there any thing here favouring Patrons ? Is there any thing here but what is agreeable to the first Book of Discipline, where not one Iota of the Right of Patrons ? And what tho' they came not so good speed at the Regent's Hand in obtaining the civil Ratification of the Right of Election, did they give up with it ? Did they take Part with the Patron against the People, which alas is now a Days the too current Practice of our Judicatories ?

His next Instance from 1581, in which the King craves the Assembly's Advice concerning the Form of Presentations, having resolved that Laick Patronages should remain whole, needs very little Answer : When the King is resolved to maintain the Right of Patronages, the Church might be fond of some Limitations, when yet it remains as their firm Opinion that it is unlawful

lawful to use the Patronage Right. There is no more Force in this, but that the Church was fond of what in any Measure might mitigate the Burden they were groaning under. The *Case Writer* is obliged to allow, "That Patronages were among the Heads of Reformation craved by the second Book of *Policy*"; but says, "That the Assembly answered the King without any hard Names to Patronages". We see how fondly he would have this Church speaking smoothly of Patronages, but how smoothly they handled this Subject, I refer to the foreaid second Book of *Policy Ch. xii. Par. 10.* "They who will not receive the Order and Policy whilk the upright State of the Kirk craves, it is in vain they have profest God's Word, whatever Names they might give to Patronages." Here is a very hard Doom against them who submit not to that Order and Policy, which the upright Estate of the Kirk craves. It is in vain for the Writer to say, "That the Book of Policy only condemns Presentations used in the Paipes Kirk, and not where Examination and Admission is allowed to the Church"; for this Privilege of Examination and Admission was also mantained in the Paipes Kirk, which I have already made appear from the Canon Law.

He next tells us, "That the Assembly 1582, promise to meddle with nothing that belonged to the civil Power"; But will it follow from this, that they promised not to meddle with Patronages? If that was their Promise, with the very next Breath the *Case Writer* brings them in breaking their Promise, petitioning the King against these Patrons who conferred Benefices by absolute Power upon inhabile Persons, without the Admission of the Church, so that their Promise meant something else as the not meddling with Patronages. And altho' they complained against them who used their Power in such an absolute Way, it will not follow, that this was all

the Fault they found with Patronages : All the Amount of their Complaint, if we wrong not their Testimony, in that forementioned Part of the second Book of Discipline, is, That although we have proposed it and agreed upon it as the Opinion of the Church, that Patronages, and Presentations to Benefices, are contrary to the Word of God, and ought to be removed, yet Corruptions on that Head run now so high, as that some Patrons violate the A&t of Parliament 1567, securing to Church Judicatories the Right of Examination and Admission. Because the Church is fond of the Removal of one Grievance, it will not follow that they are pleased with all that remain. This Instance of the Practices of some Patrons will never account for the high Language of some reformed Divines against Patronages. I shall again repeat a Sentence of *Beza Confes.* Ch. vii. and leave it to any to judge, if he was for a reformed or limited Patronage. His Words are, *Non de ejus reformatio[n]e, sed ejectione, abolitione, & ultima internectione, serio omnibus pii hominibus esse cogitandum.*

The Case Writer next tells us, "That the General Assembly 1586 concluded it lawful to admit a Pastor presented by the King's Majesty". I do not see what this makes for his Purpose ; if the Conclusion had been, that it was lawful to admit a Pastor only presented, and not elected, he had gained a great Point. If Patrons will present as they now do, it will not follow that Judicatories are not to admit Pastors duly elected, because they are presented ; but I should think our Church Judicatories should not give such Countenance to Presentations, as to settle a Presentee contrary to the Inclination of a Parish, nor should the Patron be so supported, as to let the Accepters of Presentations escape Censure. Again, I could have wished he had not argued from that of the Assembly 1586, though really there be nothing in his Quotation. It is no Secret, that tho' that Assembly went not all the King and Court

Court their proposed Lengths for establishing of *Episcopacy*, yet they went greater lengths then became a true *Presbyterian* Assembly; and it is to be observed, that their Declaration respected the Admission of Bishops, which the Author forgot to tell us, but only notices that part of it, which respected ordinary Pastors. I should not have been much surprised tho' that Assembly had done something more in favours of Patronages, tho' really what they did amounts to nothing. He refers to *Calderwood's History*, and so do I to *Page 197*. Where we will find, That in the Conference between some of the King's Council and some of the Ministry before that Assembly met, in which Meeting, tho' a Plot of *Prelacy* was contrived, it is agreed, that a Bishop shall be appointed to a special Kirk, and there serve as a Minister, providing always that the particular Flocks being warned, have place to oppone, as in the Election of other Ministers. Now tho' that was a corrupt *Juncto*, we see, that even Bishops presented are not to be admitted without the Consent of the People, and the Practice of the Church at that Time is declared, that neither Bishops, nor ordinary Ministers, tho' presented by the King, were to be admitted without the Election of the Parish. How the Author came to alledge that at that Time, the People had no free Choice, as they have now, is what I cannot understand: For tho' at that Time Measures were taking for establishing Episcopacy, the Freedom of Eiection is not only maintained as the Right of the Church, but was also agreed upon to be ratified by the King. In our Day have we any such Thing proposed as the civil Confirmation of Parishes Right to choose their Minister? No such Thing: On the contrary the Act of Parliament 1690, securing the Churches Right in that Matter, is expressly repealed by the *Act decimo Annæ*, restoring Patronages. So that a former Assertion is evident, That

Patro-

Patronages are now less limited than they were in these Years to which the Case-Writer refers, excepting in some Instances of Patrons, who at that Time, when civil Confusions and Court Intrigues were so throng, exercised their Patronage-right, disagreeable even to the Laws then in being concerning Patronages.

Again we have the Case Writer telling us, "That it was ordained in the Assembly 1590, that all Presentations be directed in Time coming to the Presbytery, where the Benefice lieth, and that in 1592, when the Government of the Church and her Privileges were ratified by Act of Parliament, all Presentations to Benefices are ordained to be directed to particular Presbyteries, with this *proviso*, that the Presbytery be bound and astrincted to receive and admit whatsoever qualified Minister presented by his Majesty and Laick Patrons; which Act, notwithstanding of this instant Clause, was well received by the General Assembly 1593, which would not have been, had they judged Patronages intolerable and sinful, even as then exercised in a way far different from what they are at present".

Whosoever reads Calderwood's History on this Subject Pag 258, and Petrie's History on the 16 Century Pag. 483, will find this to be the Case, That from the Year 1584, when the Parliament authorised Bishops, tho' with considerable Limitations, as is to be seen in the Court-Conference 1586, Presentations are to be directed to the Bishop, who with consent of a Senate is to grant Collation: Now there is no more in the forementioned Quotations of 1590, 1592 and 1594, but this, that what was formerly in the Hands of the Bishop, should, when Bishops are abolished, be in the Hand of the Presbytery. When Presbyteries are fully established, the very Superintendents and Visitors of Churches are thought no more necessary, therefore none are to be admitted to the Pastoral Office, but such as are admitted by the Presbytery,

ery, and this is explained by the A&t of Parliament
 592: Our Sovereign Lord and Estates of Parliament
 abrogate, cass and annul, the A&t of the same Par-
 liament holden at Edinburgh 1584 "granting Com-
 missions to Bishops, and other Judges constitute in
 ecclesiastical Cautes to receive his Highness's Presen-
 tations to Benefices, to give Collation thereupon;
 and therefore ordains all Presentations to be directed
 to particular Presbyteries, with full Power to give
 Collations thereupon, providing the foresaid Presbyte-
 ries be bound to admit the qualified Man presented".
 Will yield this much to the Case Writer, that I am
 perswaded the Church were fond of this A&t; but what
 then? Will it follow that they approved it in so far
 as astriking them to the Person presented by the King?
 No this will never follow, That which they were glad of,
 and were thankful for, was, that what was in the Hand
 of the usurping Bishop with respect to the Admission of
 Ministers, in virtue of that A&t of Parliament 1584.
 was now abrogated, and returned to the right Own-
 ers, the Presbyteries, who would not have acted a wise
 Part to refuse one Privilege, because they could not
 get another. This was the thing well received by the
 Assembly 1593, because they were pleased with the Abo-
 lition of Bishops, and the Restoring of Church Judica-
 ories to their just Rights and Privileges, it doth not
 follow, that they were pleased with that particular Part
 of the A&t concerning Patronages, and this is manifest,
 in so much as at that Time the second Book of *Disci-*
line was pressed with so much Zeal, and it earnestly
 raves the Abolition of Patronages.

Although the Case Writer doth alledge, That in those
 Days of our Church, Patronages were more rigorous as
 now, I think I have made the contrary appear, in that
 the free Choice of Parishes was not only maintained by
 the Church, but was also at a corrupt Juncture ratifi-
 ed

fied by the civil Power, as in the forementioned Conference 1586. But if they were more rigorously exercised then as now, how comes he to say, That the Church did not then judge them sinful and unlawful? He allows them only as now limited not to be unlawful; but concerning these ancient Times of our Church, he will have them looking on a rigorous Exercise of Patronage not to be sinful, and so to give themselves the Lie in all their Declarations against them: So that if neither in their rigorous Exercise they were esteemed unlawful in the Church, nor unlawful in their pretendedly limited Exercise, nor absolutely unlawful in themselves, it is hard to conceive in what Sense he or our new fashioned Presbyterians will have Patronages to be sinful or unlawful.

He concludes his fourth Argument with a long Story, telling us, "That if this and other reformed Churches have tolerated a more rigorous Exercise of Patronages, without pronouncing it sinful or unlawful to submit to them, when imposed by civil Authority, much more ought we now to do so, when this Power is limited, and our Discipline established. Had these worthy Confessors, who gave such Testimony against the Abuses of their Time, judged it sinful to submit to the Patronage Right, we should have heard more of their suffering for testifying against it, than of their yielding to it, or more of their petitioning to have it removed than we meet with in our History from 1567, that the Parliament established Patronages, to 1592, that the Liberties of the Church were ratified, and yet Patronages not abolished. In all which Time we find no Complaint but of the Abuses of Patronages by the *pleno jure* Collations of inhabile Persons".

To this long Story, I answer, 1. He hath not been able to prove that the reformed Churches look'd on Patronages as lawful. 2. The *Cate* Writer himself would sometimes alledge, That Patronages are tolerable

ble only, but would fix such a slander on our antient Worthies, as if they did not think them sinful : Such an Assertion from one, who directs us to the *Book of Polity*, Chap. xii. Par. 10. required more than ordinary Assurance. 3. I have made it appear from our Histories and Records, that in the first Forty Years of our Reformation, Patronages were more limited by the civil Authority than what they are now, insomuch as, even when Measures were taking to introduce Prelacy, then, notwithstanding of Patronages, Parishes had the Allowance of civil Authority freely to elect and to oppose the Person presented. 4. Patronages being in themselves sinful and unlawful, civil Authority can never bind us to submit to them, for *leges humanæ per se non obligant conscientiam.* 5. Our worthy Ministers, from 1567 to 1592. were not without Sufferings on the Account of their Opposition to the corrupt Courses that were taking, and every one who reads our Histories, will easily find out what Hardships they were put to, who were the honestest Strugglers for the Purity of our Discipline, on whom Court-vengeance broke out like a Flood, after the King's Accession to the Throne of *England*; some of them died in Banishment and Confinement, and that excellent Person, that Ornament of his Country, Mr. Andrew Melvil, whose Learning brought Foreigners to study Divinity under him at St. Andrews, how was he used ? In what Confinement had he died, if the Duke of Bouillone had not got him to grace his College of Sedan, him of whom his native Country was not worthy ? How earnest were our ancient Worthies for the carrying on of a Work of Reformation, and for the Ratification of the second *Book of Discipline* in which Patronages are so solemnly condemned ? But, 6. If the *Case* Writer wants a more express Instance of this Church their petitioning against Patronages, he shall have it. The General Assembly 1591. among other Petitions, presented to the King and his Council,

this is one, *That Patronages may be discharged.* It is true, as he says, *That Patronages were not abolished;* but this was no Ground for him to have imposed on his Readers, as if their Abolition had never been sought. Tho' the Patronage A&T passed *anno 1712.* would our Posterity be just to say, *That the Church did not remonstrate against it?* So it is false, *That for the Space of thirty two Years after the Reformation, the Church only complained of the Abuses of Patronages, and not of Patronages themselves.* 7. The *Case Writer* having specified the Complaint of this Church in 1586 against them, who by their absolute Power presented and intruded Ministers on Churches, without the Presbytery's Examination or Admission; and he having restricted their Complaint to this Point allenarly, we come more fully to understand what he means by the Exercise of Patronages *pleno jure,* and in what Sense he understands Patronages to be unlawful, that is, only when Persons presented are obtruded on Churches, without the Presbytery's Examination or Admission. Now he gives Patronages or Presentations of this Kind a wrong Name, when he says, that this is *pleno jure,* for this Way of presenting, is so far from being *pleno jure,* that it is *nullo jure;* this Way of presenting was warranted by no civil Law then in being, and by the *Canon Law* he who exercises his Right in this Fashion, was to be excommunicated; and if inhabile Persons were presented, after Examination and Evidence of their Inhabitability, by all the foresaid Laws they were to be rejected. So that, tho' sometimes Patrons obtruded Ministers on Parishes in that Way, such a Method being contrary to the Laws, they did it rather *suo arbitrio,* or by Court-connivances, but *nullo jure.*

The whole Scope of the *Case Writer's Instances,* is to prove what I have shown to be a Mistake, " *That for the Space of thirty two Years after our Reformation, this Church was content with Patronages,*
 " *providing,*

“ providing, that Presbyteries had the Examination
“ and Admission of the Persons presented, and that
“ they tamely yielded up the Church’s Right of Elec-
“ tion, and that they sought not to be free of Patro-
“ nages, nor complained of any Thing in the Exer-
“ cise of that Right, but this, when Persons presented
“ were obtruded on Parishes without Examination or
“ Admission.” So that he receives the whole Doctrine
of the *Canon Law* with respect to Patronages, and
would fix such a Slander on this Church, as that for
thirty two Years after the Reformation, they never
complained of any Thing in Patronages, but that which
by the *Canon Law* it self is condemned. Confidence
enough! especially that *second Book of Discipl. Chap.*
xii. Par. 10. the Corruption of Patronages there com-
plained of, is asserted to have flown from the *Canon Law*. Tho’ the *Case Writer* had fairly represented the
Conduct of the Church of *Scotland*, during the Time
mentioned, he should not have been so well buckled in
Defence of his darling Proposition, *That we are to al-*
low of Patronages, when civil Authority imposes the
same, as he imagines, nor will the Imposition of them
by civil Authority prove the Lawfulness of submitting
to them. The Church was then striving against that
Imposition, and *anno 1649* obtained the Abolition of
Patronages; and after a long Captivity, got the same
Power again taken away, *anno 1690*. And *anno 1707*.
got an Article of the Union securing our Church Esta-
blishment, according to these laudable Laws; and tho’
contrary to this Act of Security, in a perilous Time
to Church and State, Patronages were restored, the Au-
thor thinks we should quietly submit thereto; and would fain have the Church of *Scotland* speaking his
Way. But he is out in this Project so very far, that
were these bright Luminaries of this Church living, who
appeared so zealous against the Corruptions of their
Time, he, and such other *Eraſtian* Prattlers might be

obliged to retract what they now talk with such Confidence.

It is very evident, That in this corrupt Time, Methods are taking to transmit to Posterity very latitudinarian Opinions, concerning the Government and Discipline of this Church ; and it hath always been the Way of corrupt Teachers, to endeavour to have some famed Church speaking their Way, that their Corruptions may prevail the more easily, and the fly *Case* Writer hath acted his Part, if not with designed Falshood, yet with notour Mistakes, as to Facts, which might have been prevented, if he had searched our Records with a better Design, than to find them conniving with, or supporting that, which they wrestled so vigorously against, till it was got removed.

I now proceed to the *Case* Writer his fifth Argument, for the Tolerability of Patronages, for our submitting to them, a Part of which is, " As in effect " the Church of *Scotland* hath always since the Reformation submitted to this Power, excepting the Space of thirty three Years, that the civil Authority thought fit to relieve her : So now that the same Authority thinks fit to impose Patronages, under greater Limitations than ever heretofore, the Church doth not judge it expedient to forfeit the Protection of the Laws, by strugling against them, &c."

To this Part of his Argument, I answer first, That the Church of *Scotland* never gave any active Submission to Patronages, as hath been proven from her Standards of Discipline, Complaints against, and earnest strugling to have them removed, and no Argument in favours of Patronages can be drawn from a passive Submission, when this Grievance is imposed on the Church nill they will they. 2. Whosoever compares the A&t of Parliament 1567, concerning Patronages, and the A&t. *decimo Annæ* restoring them, will find the Limitations to be greater and stronger in the first,

first, than in the last. 3. The *Cafe Writer* contradicts himself, in the second Particular of his *Case*. He told us, *That the Church ought to make pressing Instances to the civil Powers, to have the Grievance of Patronage removed*; and now he thinks, *It inexpedient for the Church, to forfeit the Protection of the Laws, by struggling against them.* So that he must either own a flat Contradiction, or say, That there are no Grievances sustained by the Laws establishing Patronages. By which we see, to what his Toleration of Patronages amounts; to this plainly, that lest we forfeit the Protection of the Laws, we are to sit down contented with a Grievance however intolerable; a Method which was never relished by the Members of a free State, much less by the Church, whose Laws are distinct from that of the State. This Way of reasoning would censure our General Assembly, anno 1712. who without any Regard to this apprehended Forfeity of the Protection of the Laws, did testify so strongly against Patronages. Their Adherence at that Time to the *Hanover Succession* made them run the Risque of all their Privileges; but now that this illustrious Family sways the Scupper, they must be ill affected to his Majesty's Government, who would insinuate our being in Hazard of forfeiting the Protection of Law, by our struggling against Patronages, which Law was palmed upon us, when we were risquing all for the Succession in that Family; and so sensible was his late Majesty, of glorious Memory, of the Wrong done us at that Time, that anno 1719. we got that A&t concerning Acceptances, which if it had been duly improven, that is, if there had been no Acceptances, the Patronage A&t had been void and null. The *Cafe Writer* should rather say, That if we will not be silent, till Churches be planted by Presentations, the corrupt Managers in this Church will the sooner pluck off the Mask, and stand against us on the Side to which they are fast driving. Had it not been

been for the Treachery of Church-men, I believe, Charles II. had never so overturned this Church, or been able so easily to have done it.

How different is the Church of *Scotland* now, with respect to the Encouragement of Patronages, from what she was *anno 1715.* will appear from the tenth Act of Assembly that Year. In that Assembly's Memorial, you have these remarkable Words, " By the Act restoring the Power of Presentation to Patrons, the legally established Constitution of this Church was altered in a very important Point." That venerable Assembly thought not the Vigour of our Church Constitution such a Limitation to Patronages, as that they might be safely, or lawfully used. On the contrary, " They recommend to all their Members, to use their best Endeavour with their Friends at *London*, that the Ends of the Address of the Commission and General Assembly 1712. may be obtained." Now what Limitation hath obtained since, either by the Laws of the Land, or Vigor of our Church Constitution, to make Patronage more tolerable? Is it the Act of Parliament 1719? Yes, if duly improven, but if accepting of a Presentation be neither sinful, scandalous nor unlawful, there is no Limitation in the Act. Is it the Vigor of our Church Constitution? That cannot be, for the Accepters of Presentations are not censured, but encouraged, Persons presented are settled over the Belly of the People; high and loud are the Complaints, and terrible are the Confusions, that on this account are in this Church at this Day, which really flows from our selves, in not improving that wholesome Act 1719. which was given for our Relief, and which we could not but expect, in consequence of that solemn Oath, which his late Majesty took, for the Defence of our Privileges, which we are still to expect the Maintenance of, by his present Majesty, in consequence of the same

solemn Oath, which I shall here transcribe, because it may not be in the Hands of every Person.

“ I G E O R G E King of Great Britain, France, and Ireland, Defender of the Faith, &c. do faithfully promise and swear, That I shall inviolably maintain and preserve the Settlement of the true Protestant Religion, with the Government, Worship, Discipline, Rights and Privileges of the Church of Scotland, as established by the Laws made there, in Prosecution of the *Claim of Right*, and particularly, an Act intituled, *Act for securing the Protestant Religion, and Presbyterian Church Government*, and by the Acts past in the Parliament of both Kingdoms, for Union of the two Kingdoms. So help me G O D.

Here is not only the Word of a King, but the solemn Oath of a King, for maintaining of all our Privileges, secured by the Laws anterior to the Act made in that critical Time, restoring Patronages. So that none can perswade us; that we run any Risque, by striving against Patronages, unless we should suspect the Security given us by the Laws of the Land, and the Oath of the King, which we leave to them, who are at so great Pains to beget Jealousies of the King and Government in the Minds of his Subjects.

The Case Writer goes on in his fifth Argument, by telling us, *That the Church at present is so far from judging Patronages absolutely sinful and intolerable, that she takes the Benefit of the same Right, when the Patron is so kind, as to let it devolve on her, and presents jure devoluto; for were it an unlawful Power in it self, it could not be made lawful by transferring it to another; or, if it were unlawful to submit to it, it would be more unlawful to exercise it, yea to give any Countenance to that Authority that established it, by delaying*

laying till the six Months elapse (the most sensible Part of the Grievance) to wait for the Power of presenting, which gives Rise to the Grievance.

To this I answer first, 'That the putting Presbyteries and Patrons upon the same Footing is not good; by the Law of the Lord Jesus, Presbyteries have the Care of the Church committed unto them, but Patrons have no such Trust nor Authority. 2. Presbyteries have the only proper Right to present to Office and Benefice; to the Office, in virtue of their Mandate of committing the pastoral Trust to faithful Men, and to set over the Lord's Work Men sought out by the Church; and as the Benefice follows the Office, and the Workman is worthy of his Wages, they who invest them with the Office, give them the Right to the Wages; and if the Tithes be the Patrimony of the Church, none have the Right of disposing this Patrimony, but they whose Patrimony it is. 3. We find in the iv Chap. of the *first Book of Discipline*, That this Church claimed a *jus devolutum*, before there was any Act of Parliament appointing, or allowing of any such Thing, that is, if Parishes should be negligent, in a certain Space of calling a Minister, then they who had the Inspection of the Church were to look out a fit Man for them: Here we had no Business with the Lay-patron, who hath no Right of Inspection over the Church committed unto him. 4. When Parishes are altogether negligent, or after the Expiration of a competent Time allowed them by the Church, for calling a Minister, do in any proper Way signify their Inclinations, Presbyteries, in virtue of an intrinsical Right, do present to Office and Benefice; and although the Law speaks as giving this devolved Power to Presbyteries, this is but a Pretence; for the Church had that Right and Power without any Grant of Law. So that after six Months are elapsed, the Church exerciseth her intrinsical Right of calling and presenting Ministers,

Ministers, which by the Force of the Patronage Act could not be planted, till the Patron's Right was run out. 5. The *Case Writer* would infer the Lawfulness of the Exercise of Patronages, from Presbyteries their exercising the same Right, when devolved on them; by this Means he gives the Patron an intrinsical Right and Power, for the Presbytery's Right is such; and if Patron and Presbytery be on a Level, as to their Right of presenting, then the one hath an intrinsick Right, as well as the other; and so Patronages come to be established with higher Powers than the Patrons themselves have yet claimed. 6. If Patron and Presbytery be on a Level, as to the presenting of fit Men, then the Lay-patron should never present, till the Parish decline to make a Choice, and some reasonable Time should be allowed to Parishes for this Choice, by the Lay-patron, as well as by the Presbytery; but no such Thing is authorized by Law or Practice. 7. Some Presbyteries have thought the *jus devolutum* such a civil Affair, and so much resembling the Lay-patron's Right, that they have not given presbyterial Presentations, where there was an Election made by the Parish, but have only voted a Concurrence with the Election made by the Parish. But the Presbytery their presenting, in consequence of their intrinsical Right, will never say, that they do this only as warranted by a civil Law; they exercise their Right when the Laws put no Stop; so that Presbyteries may, and ought to present, as having the only, true and proper Right to invest a Man with the pastoral Office, which entitles him to the Benefice.

The *Case Writer* concludes this Argument, by saying, *That the intrinsick Power of the Church in sacris, is still the same, and can suffer no Limitation by human Authority; and consequently she hath a Right of establishing a pastoral Relation in three Months, as well as six; but the Law making the Presentation necessary*

by the Lay-patron, if he use his Power, or by the Presbytery, if he allow it to fall into their Hands. Therefore Church Judicatories find it convenient, to delay the Exercise of their intrinsick Power of establishing a pastoral Relation, till they can have the other extrinsick or civil Right superadded, of making the legal Provision effectual.

This is such a confused Medley, as that, although the Writer speaks of the Church's intrinsick Power, he really takes it away; tho' he seems to be for a limited, he is yet for an absolute Patronage. For, first, Who denies, that the intrinsick Power of the Church *in sacris*, is still the same? But because their Power is still the same, and should suffer no Limitations, will it follow, that the Church are not Sufferers, by Limitations imposed by human Authority? Or. 2. Because the Church hath an intrinsick Power; will it follow, that they may not be hindred from the Exercise of this Power by human Authority? 3. I have shown, That Presentations by the Lay-patron are not necessary to make the legal Provision effectual: If the Patron present not, the Person settled hath a legal and valid Title to the Provision. Here I renew a former Remark, That the Writer not only makes Presentations tolerable Grievances, *vca* Patronages in their Exercise lawful, but also necessary; if they be necessary, they should meet with a positive Regard. It is true he adds, *That they are only necessary, if the Patron use his Power*, that is, if you settle another as the Presentee, he cannot have the Stipend. This I deny, because if there be no Acceptance, the Presentation hath no Force in Law: So that the Necessity is forced by the Acceptors of Presentations. 4. That Presentations by Presbyteries, under the formal Notion of Presentations, are necessary for the legal Provision, is denied; because some Presbyteries present not at all, and yet an Extract of their Deed, in admitting the Minister, gives a sufficient

sufficient Warrant for uplifting the Benefice, and for using all Diligence for that End. 5. I am not able to understand what the Writer means, when he says, *That Church Judicatories find it convenient, to delay the Excercise of their intrinsick Power, till they can have the other civil Right superadded of making the legal Provision effectual.* Tho' Church Judicatories can fix a pastoral Relation, when ever it is desired, by a Parish, and so give that Right to the Stipend, which allows the Office, and is secured by the Law of God, &c there is an Invasion of the Church's Power, by the pretended Right of the Patron; so that the Presbytery their delaying to fix a pastoral Relation, till the Patron's six Months run out, is not for a civil Right, but till an imposed and usurped Right be prescribed, and then they be at Liberty to exercise their intrinsick Power. 6. This *jus devolutum*, which many make so much Noise about, did obtain from 1560 to 1567. from 1649 to 1662. from 1690 to 1712. in which Periods Presbyteries acted freely in establishing a pastoral Relation, either within or without the six Months, as they found Parishes best disposed, and ready to elect a Minister; and so they concurred with them, in providing them with fit Men. In these Periods Presbyteries never called *jure devoluto*, but when Parishes neglected to call in due Time, then the Presbytery called, which every Body will own to be something else as a simple Presentation.

I am now at a Close with the Case Writer's Arguments for Patronages, or the Lawfulness of their Exercise: I shall next offer some modern Arguments, which, I am surprised, to find omitted by him. One of them is, *That the General Assembly 1642, made up Lists of Persons, out of which the King and Patrons might present one.* Now, say our modern Patrons of Patronages, here is the Church homologating the Exercise of the Patronage right.

To this I answer, *first*, That tho' the Church was then fond of such a Limitation of the Patronage-right, it will not follow, that they did not still esteem Patronages, both as to the Right, and the Exercise of that Right to be a Grievance. 2. When the Patrons were obliged to present one of the List given them, by the Judicatories of the Church; this was a Limitation, that at present we have not the like. 3. This List was not only made up by the Presbyteries, but also with the Consent of the most and best Part of the vacant Congregation; and although the Patron pretended a Right to present, yet, according to this Way, it was a subsequent and supervenient Deed to that of the Church. So that, 4. When Patronages were imposed on the Church, nill they will they, it was no Homologation of that Right, to secure, the best Way they could, the Right of the Church, when they were left to groan under such a Grievance, as that of Patronages.

But again it is objected, *That the Assembly, 1642, were to list for the King's Presentation, such as were willing to accept of Presentations; by which it would appear, that they looked not on the accepting of Presentations, as sinful or unlawful.*

To this it is altogether easie to answer. 1. There was at that Time no civil Law requiring an Acceptance, else the Presentation to be void in Law; if at that Time they had had such an Advantage, which we have now, they would have improven it to better Purpose, as we do now, they had rid themselves of any Thing grievous in Patronages. 2. All that is in the Church their listing Persons willing to accept, is, they were not to list any, who might be averse to a Settlement in such a Parish; lest, if such a Person's being listed and presented, and a Settlement not ensuing, the Patron might present another, without Regard to a List made up by Presbyteries, and consented to by the

vacant

vacant Congregation. 3. I hope, it will not from this be inferred, that the Church, at that Time, wanted no more as a due bounding and limiting of Patronages; we see this was obtained, and yet they rested not content with a Limitation of Patronages, of which we have not the like, till *anno 1649.* that usurped Right was got altogether abolished.

It is again at this Day pretended by some, *That Patrons, in their presenting, are bound to the Church's free Election.*

To this I answer, first, If this Argument hath any Thing in it, it hath this much, That Patrons are not to present, till they see how the Election goes; which supposes the Election to be gone about within the Months cf the subsisting of his Right, which cannot be safely set about, unless the Patron give Security, that he will not mar the Election, by presenting another as the elected. 2. If the Patron give such Security the Church is brought to bargain with him, who hath no Right to obstruct the Exercise of the Church's Power. 3. Tho' this should obtain, as seldom it hath, and sometimes when Promises of this Kind have been given, they have been broken; yet it obliges Parishes, to the Prejudice of their sacred Rights, to depend on an extrinsic and usurped Power, for complicating of the Call, as if it were defective without the Patron. But, 4. This is not the Case, Patrons do present before there be a regular Gospel Call. 5. Although that Presbyteries should approve of the Fitness of the Presentee, and the Parish should willingly accept of him, yet the Act of the Church, in that Case, may be termed a subsequent and supervenient Consent to an Election already made by the Patron, but can never in any Propriety of Speech be termed the Election it self; which this Church finds by sad Experience, when some Ministers travel from House to House in Parishes, to prevail with the People, to accept of the Person presented,

sented, which Parishes are often obliged to, the Judicatures of the Church so often determining in Favours of the Patron, tho' contrary to the real Inclinations of the People. 6. If Patrons are bound to the Church's Election, then they ought never to present, till the Election preceed; and if this be the Way with the Patron, he is either tied by Consent, or by some Law binding upon him: Not by any Law binding upon him, no Church Law; for tho' he would regard that, there is no Act of Assembly appointing him only to present the Man duly elected; nor would any Law or Limitation bind him, but a Law made by them who gave him his Right, and this is the civil Power, who reject the Church's Election. As to Consent, that doth not ordinarily obtain, and when it doth, we have seen what *hocus pocus* hath been in the Bargain.

It is further urged, "That Presentations are necessary as the Law now stands to give the Minister a legal Right to his Stipend, and that the Patron meddles with nothing that is Ecclesiastical, but leaves it to the Church, to choice, try and admit; he only presents to the Benefice, or gives the Minister a Right, that according to the Laws of the Land he may bruik his Benefice."

To these Things, I answer, first, I see no Necessity as the Law now stands for the Patron to give a Right to the Benefice; for if a Presentation be not given, and tho' given, if it be not accepted, a Minister's Act of Admission or Ordination, will give him all legal Ground to demand his Stipend. 2. It is a great Mistake that the Patron meddles not with the Ecclesiastical Part, for he meddles with what is unquestionably Ecclesiastical, he nominates the Person, and by the Patronage-act, Church-judicatures are obliged to admit the Man nominate by the Patron, and this altho' a Parish should incline another. 3. I shall for a further Answer transcribe what the learned Mr. Rutherford

ford offers with respect to the Patron's Right of presenting to a Benefice, and a Minister's Right thereto. He saith, "That it is not a temporal or civil Right, but a spiritual Right ; tho' we should grant that the People had a free Voice in choosing, and that the Patron were obliged to present to the Benefice the Man whom the People have freely chosen, and whom the Elders by Imposition of Hands have ordained, because the Pastor hath a Right to his Benefice, as the Workman is worthy of his Hire, *1 Cor. ix. 8, &c. Gal. vi. 6. Matth. xvi. 10.* Therefore if the Patron give the Pastor any Right to the Benefice, it must be a spiritual Right. If it be said, he may give him a civil Right before Men, that according to the Laws of the Common-wealth he may legally bruik and enjoy the Benefice ; this is but a Shift, for the civil Right before Men, is essentially founded upon the Law of God, that saith, *the Workman is worthy of his Wages*, and it is the same Right that the Word of God really speaketh of. Now by no Word of God hath the Patron Power to put the Preacher in that Case, *that he shall be worthy of his Wages*, for he being called and chosen as Pastor, he hath this spiritual Right, not of one but the whole Church." 4 A Minister's Right to his Benefice is either civil or ecclesiastick ; that the Minister's Right is ecclesiastick and not civil, I have made appear, and therefore the Patron's Right, if he have any, must be an ecclesiastick Right : And that it is not so, will appear. 1. If it were a Spiritual and Ecclesiastick Right, it could not be transmitted by Birth or Right of Blood. 2. If it were an ecclesiastick Right, it could not be bought and sold as a Man's private Inheritance. 3. If it were a spiritual Right, he must have this Right as a Church-officer, or as a private Church-member ; not the first, for no such Church-officer is appointed, nor the last, for other Church-members may claim the same Privilege, and so Patronages are undone. Neither

ther is the Patronage-right a truly civil Right ; as may appear, *first*, From the Nature of these A&ts in which it is exerceed, *viz.* the looking out and Nomination of a Minister, and the negative Interest acclaimed in their Maintenance, all which are Actions of a spiritual and ecclesiastick Nature. 2. Although the Conveyance and Confirmation of Patronages have been from the Magistrate, yet this cannot prove their Power to be truly civil. *First*, Because no Conveyance or Confirmation of a Right can alter its Nature, which it still retains, come through what Hands it will. 2. No Law, nor Magistrate can confer or confirm a Power that is materially and in itself unjust and unlawful ; for it is not enough to make a Power materially just and lawful, that it be formally legal. *Sixtly*, Although the civil Magistrate may and ought to confirm a Minister's Right to his Stipend, yet he giveth not the Right, the Church gives the Right, the Magistrate, supports and confirms the Right given ; so that the Patrons usurped Power is higher than that of the Magistrate, the Patron claiming a Title to give the Right to the Benefice, which he cannot do, either in Point of Right, as hath been shwon, or in respect of the Churches Necessities ; for no End of the Patron's Right and Power can be thought on, but what can be better attained by the Deed of the Church, to whom the Affair doth belong. For the Church is sufficiently provided by her infinitely wise and loving Head and King, to give a Minister a lawful Title to his Maintenance and Living. He who confers not the Office cannot give a Right to the Wages, he who establisheth not the Relation between Pastor and Parish, gives not the Right to the Living for the Support of the Pastor so related.

Lastly, It is urged by our modern Votaries for Patronages, "That although a Person presented doth accept of a Presentation, this doth not hurt to a due Election,

" nor

* nor any ways invade the Right of the Church, either as to Election or Admission, the Person presented always accepting, upon Condition of a Gospel Call, and not otherwise. So that where there are such Conditions and Limitations, there is no Harm done the Church, nor Fault in the Presentee.

Whatever the Arguers for Presentations may say, either as to the Right, or the Manner of using this Right, this Argument will go but short Way. For, first, Whatever Limitations and Conditions the Acceptor of a Presentation may use, if it be really an Acceptance, the Presentation becomes valid in Law; and when the Patron's Right comes to be considered in Law, it will be the Rules establishing Patronages, all which pay no Respect to Elections made by Parishes; but on the contrary, repeals their Right. So that the Acceptor is highly faulty; he homologates that Law, which repeals the Peoples Election, or Right to elect, and he confirms the Patronage-right, which is founded on that Law, and gives the Patron a Handle to involve the Settlement of one duly elected, which would not be, if there were no Acceptance of a Presentation. 2. The Acceptor hereby acknowledgeth the Patron's Title to dispose of the Benefice, which being the Patrimony of the Church, is at the Church's Disposal. 3. All Acceptances are for ordinary given previous to Elections, and though upon Condition, if they shall be elected; this is a declaring to the World how fain they would have a Parish choosing them; yea Parishes are under some Necessity of choosing them; for if they elect otherwise, they must be involved in a Process with the Patron, or else to have no Stipend to give the Minister they choose, but at the Patron's Discretion. 4. All Acceptances are prior to the Presbytery's Examination, by which the Presentee anticipates the Presbytery's Judgment of his Capacity, and supposeth his own Capacity, which is not so becoming them, who

are impressed with the Weight of the ministerial Trust.
 5. The accepting a Presentation before Admission, is a securing a Benefice before a Right to it be constitute.
 6. The common and ordinary Forms of Presentations, involve the Acceptor in a *simoniacal* Paction, and an Accession to Sacrilege; for the Candidate is presented to so much Stipend and no more. Now, I say, this is *simoniacal*; because the Presentation is thankfully accepted, tho' more Stipend might be had; and it is sacrilegious, because it is an Acknowledgment of the Patron's Right to retain the remaining Patrimony of the Church, which many of them do very expressly in their Presentations, by which Bargain and Acceptance, they cannot well seek their small Benefices amended. It may not be impertinent here to transcribe the Decree of a Popish Council at *Mentz* in *Germany*, anno 1549., very well translated by the reverend Mr. Park.

" We peremptorily require that no Prelate, nor Official in his Name, to whom the Right of Institution pertains, presume to give any Institution in a Benefice, to which the Cure of Souls is annexed, unless he first instruct, that the Rents of it are sufficient for his Sustentation, and that they are left intire to him by the Patron, otherwise we decern the Institution to be void and null; and ordains the Contraveners of this wholesome Prohibition, to be *ipso facto* suspended from their Office. And we do likewise prohibite any such Person, as hath accepted of a Presentation on such Conditions from the Patron, to a Benefice, either with, or without Cure, to be institute therein." How doth the Decree of this Popish Council strike against our present Patrons, and Accepters of Presentations; Presentations now being to so much Stipend, and no more, tho' the Benefice be so far from sufficient, that it is often below the *minimum* of what the Law allows: And many Patrons are so far from leaving the Tithes intire to the Intrant, as a Fund of sufficient

sufficient Maintenance, that they (the Patrons) make very special and particular Reservations of these to themselves. So that we see, That the Accepters of Presentations on such Terms, and the Admitters of the Persons presented, after this Fashion, are involved both in *Simony* and *Sacrilege*.

C H A P. VI.

In this short Chapter I shall, after the Example of the Case-Writer, offer some Corrollaries from what, I hope, I have proven.

1. *Corrolary.* **T**He Case Writer is pleased to say, *That it is neither sinful, scandalous, nor unlawful to accept of a Presentation.* I say, That seeing Presentations have no Validity in Law, unless they be accepted; it is both sinful, scandalous, and unlawful to accept of them..

2. *Cor.* The Case Writer says, *That the Circumstance of Time, viz. before or after sounding Inclinations, is indifferent, provided a Respect be had to the Choice of the People and Concurrence of the Church.* I say, That whatever Difference there be between Presentations given before or after sounding the Inclinations of People, and the accepting of Presentations in such Time and Way before or after, yet Acceptances are unlawful, as they homologate an usurped Right, and do confirm the Deed of him, th: Patron, to wit, whose Presentation without an Acceptance would be void and null in Law.

3. *Cor.* The Case Writer says, *That the Patron's Nomination, Recommendation, or Presentation should at least be so far regarded, as that his Presentee, if unexceptionable, have Access to stand a Candidate with others (if the Church or People name any) for the Suffrages*

frages of the People at a free Election. I say, That a Patron, if a Residenter or Heritor, may nominate an unexceptionable Person to be on the List, as well as any other Heritor or Parishioner; but tho' Patron, if he have no Residence or Interest in the Parish, he hath no just Right to nominate one to be on the List, nor can the Parish be said to have a free Choice, when a Presentee must be listed, when the Patron hath no further Concern in the Parish, as his Patronage-right, Heritors and People being for ordinary much under the Influence of Patrons, who can do them temporal Favours, either as to Tacks or Tithes, or Dispositions of vacant Stipends.

4. Cor. The *Case Writer* says, " That Church Judicatures cannot be restricted as to Time by the Patron, yet if he concur, they ought in Prudence to proceed to settle within six Months, since the sacred Rights are in their own Hands, and that the legal Title is secured by the Patron; and as a Delay in such Cases gives a Jealousy to the civil Power, so it protracts the Vacancy of a Parish unnecessarily, that might be sooner supplied, and that without weakening the Patron's Right if duly intimated". I say that the Church ought then to proceed to settle a Parish, when they can do it in a Way agreeable to the Rights of the Church, and are in no hazard of having the Freedom of Election invaded by the Patron's pretending to present to the Charge, and to give the Benefice to whom he pleases; and that it is not safe for Presbyteries to settle vacant Kirks during the Patron's six Months, unless there be unquestionable Assurance, that the Patron will do nothing prejudicial to a free Election, nor anticipate the Presbytery's Concurrence: And whatever Jealousies may arise in the Minds of Patrons, whose Right is but an Usurpation, there is the justest Ground to suspect them when they do otherwise; for in fact Patrons for ordinary involve free Elections, and regular Calls, when they have been set about during

during the Patron's six Months, and so the Vacancy hath been protracted, instead of being speedily supplied, and all by the Patron's Zeal for his usurped Right whose Right it concerneth not the Judicatories of the Church to strengthen, as the *Case Writer* would have us, which by the by, would be somewhat more as a Toleration.

5 Cor. I agree with the *Case Writer*, *That the Presentation of a Patron cannot found a pastoral Relation*: But I affirm, That it can hinder the establishing of a Relation, when the Patron pretends, in virtue of his usurped Right, to alienate the Benefice, by giving his Presentation to one, who may not be duly elected, regularly called and admitted.

So that from the whole, it manifestly appears, That the Right of Patronage is in it self unlawful; and being so, cannot in its Exercise be lawful; and whoever of a Presbyterian Minister or Probationer, doth accept of a Presentation, he in so far strengthens an usurped Right, and weakens his own Principle.

I shall now conclude by observing, that tho' Patronages were lawful in themselves (which I hope they will be owned by *Presbyterian* Ministers not to be) yet the use of them, even with all their pretended Limitations, is accompanied with such Inconveniences, that they ought to be laid aside, and no active Countenance should be given them; many sad Effects of limited or absolute Patronages are there. as 1. The Presentee his Friends often engage for his Dependence on the Patron. 2. Persons presented concur with Patrons and their Adherents for promoting a Course of Deliction, and their Suffrage is engaged for that effect. 3. The Right of Patronage keeps the Church in such a sneaking and slavish Dependence on great Men, as is most unworthy of the Dignity and Character of Ministers of the Gospel.

The Truth of these Things is so manifest, that many Presbyteries and Synods, in which, not ten or twelve Years, yea not six Years ago, there were zealous Appearances for the Cause and Interest of this Church, are now broken, dispirited, and overpowered by such as are got into the Ministry by Patronage-Men, that languishing and deplorable is the state of the Church in all Corners.

I am afraid the Iniquity of our Time is too great, and we are too far gone in a degenerate Course, to propose a Remedy of this Evil of Patronages. But the following Particulars might be considered. As first, The zealous Concern of the Church of *Scotland* hath been such, under all Disadvantages and Discouragements, for our present happy civil Government, that it might be expected, that what Invasion hath been made, on the Union-Treaty, securing the Liberties and Privileges of this Church, at a Time when our Adherence to the Succession to the Throne, in the present Royal Family, was no small Occasion of that Encroachment, and of our Trouble, that all such Encroachments should be removed. But, 2. If an untainted Loyalty and assiduous Endeavour to promote good Affection to the Royal Family, and to prevent the Growth of *Jacobitism*, advancing fast in our Land, under the Influence of the *Toleration Act*, brought into our Nation with the *Act restoring Patronages*, may not so far intitle us to the civil Regard, as to have the Patronage *Act* repealed; we may at least expect, that these Patrons, who are Members of our Church Judicatories, would forbear the Exercise of their Patronage-right, that the World may believe, that their subscribing the *Formula*, thereby binding themselves, *never to do any Thing prejudicial to this Church, directly or indirectly*, is esteemed by them, as an Oath of God binding upon them, and which they will religiously observe. But, 3. If any of our Ruling-elders, who are Patrons

Patrons, shall put a Matter of pretended civil Interest in the Balance with their solemn Vows and Subscriptions, which we should be unwilling to suppose, if there were not so many Instances of their zealous Exercise of their Patronage-right ; yet Church Judicaries should take Care, that neither Ministers nor Probationers accept of Presentations, without which Acceptances, Presentations have no Validity in Law. But alas ! such Ministers and Probationers are the Men now currently encouraged : And Ministers do maintain, That it is neither sinful, scandalous, nor unlawful to accept of Presentations ; all one, as if it were said, *That though, without our accepting of Presentations, they have no Force in Law, yet it is neither sinful, scandalous, nor unlawful to do a Deed, that may give them their due and legal Force.* So that, considering the civil and legal Advantage we have, by the Act of Parliament 1719. concerning Patronages, nothing but a declining Church, that will not be reformed nor healed, must be the Cause of this prevailing Evil.

~W. F I N I S.







